

# OFFICE COPY

VOLUME I

## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

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MICHIGAN NATIONAL BANK, ET AL.,  
APPELLANTS,

vs.

MICHIGAN, ET AL.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

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FILED JUNE 17, 1960

PROBABLE JURISDICTION NOTED OCTOBER 10, 1960

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STATE OF MICHIGAN

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IN THE

# SUPREME COURT

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Appeal from the Court of Claims

Honorable Fred N. Searl, Circuit Judge, Acting Judge  
of the Court of Claims

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Plaintiff and Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

No.

v.  
STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Defendants and Appellees.

PLAINTIFF AND APPELLANT'S  
APPENDIX

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## CALENDAR ENTRIES

## 1953

- Dec. 7. Petition filed.
- Dec. 23. Defendants' answer filed.
- Dec. 23. Proof of service filed.
- Dec. 23. Notice of appearance to petition and statement of claim filed.

## 1954

- Feb. 13. Order and stipulation for continuance filed—continued to September, 1954, term.
- Aug. 11. Stipulation for continuance to March term, 1955, filed.
- Dec. 6. Over to December 21, 1954, for pre-trial hearing as per order signed by Judge Black of 12/7/54.
- Dec. 21. Pre-trial conference held.
- Dec. 27. Order of the Court dated 12/21/54 re pre-trial signed, filed.

## 1955

- May 6. Order granting petitions for leave to intervene filed (signed by Judge Searl).
- May 23. Intervenor's answer to petition and statement of claim filed.

## 1956

- Jan. 1. Plaintiff's statement of position filed.
- Mar. 30. Petition for leave to intervene filed.
- Mar. 30. Waiver of notice and consent to entry of order granting petitions for leave to intervene filed.



- Mar. 30. Order granting petitions for leave to intervene filed.
- Apr. 17. Statement of position of defendants and defendants intervenors filed (Judge Searl).
- Apr. 24. Petitions for leave to intervene and notice of hearing on petitions for leave to intervene (Community National Bank of Pontiac, Commercial National Bank of Ithaca, and First National Bank of Holland) filed (Judge Searl).
- May 3. Plaintiff intervenor's verified petition and statement of claim (National Bank of Wyandotte; First National Bank, Charlotte; Houghton National Bank; First National Bank, Three Rivers; National Bank of Jackson; and First National Bank and Trust Company of Kalamazoo) filed (Judge Searl).
- May 3. Order denying petitions for leave to intervene (Community National Bank of Ithaca and First National Bank of Holland) filed (Judge Searl).
- May 3. Order of discovery filed (Judge Searl).
- May 4. Plaintiff intervenor's petition and statement of claim (Commercial National Bank of Iron Mountain) filed.
- June 12. Order for discovery filed.
- June 28. Answer of intervenor plaintiffs to defendants' motion to strike intervenor plaintiffs as parties to this action filed (Judge Searl).
- June 28. Motion to strike intervenors defendants as parties to this action filed (Judge Searl).
- July 5. Answer to plaintiff's motion to strike defendant intervenors filed with Judge Searl.



- July 5. Opinion (relative to additional parties) filed.  
Oct. 12. Notice of settlement of order filed with Judge Searl.  
Nov. 21. Notice of settlement of order filed with Judge Searl.  
Nov. 21. Notice of discontinuance on behalf of plaintiff intervenors Dart National Bank and First National Bank (Charlotte) filed with Judge Searl.  
Nov. 28. Order re intervenor plaintiffs and intervenor defendants and petitions for leave to intervene.

## 1957

- Dec. 10. Official communication of Judge Searl to counsel filed.

## 1958

- Jan. 8. Notice of hearing filed.  
Feb. 18. Request for admissions filed.  
Feb. 28. Notice of intention to offer copies, synopses or abstracts of public records filed by plaintiff.  
Feb. 28. Memorandum of plaintiff and plaintiff intervenors re notice of intention to offer copies, synopses or abstracts of public records filed by plaintiff.  
Feb. 28. Defendants' answer to plaintiff's request for admissions.  
Mar. 20. Opinion filed.  
Mar. 21. Stipulation for adjournment of trial date and order for continuance filed.  
Apr. 25. Notice of intention to offer copies, synopses or abstracts of public records filed.

- May 7. Defendants' motion for summary judgment of no cause of action, affidavit of Clarence W. Lock, notice of hearing, and proof of service filed.
- May 14. Petition to modify subpoena (Capitol Savings and Loan Association) and notice of hearing filed.
- May 13. Defendants' brief in support of motion for summary judgment filed.
- May 15. Notice of appearance and petition to modify subpoena (Calhoun Federal Savings and Loan Association) and notice of hearing filed.
- May 15. Petition to modify subpoena (Saginaw Savings and Loan), notice of hearing and proof of service filed.
- May 15. Petition to modify subpoena (First Federal Savings and Loan Association of Flint), motion to modify subpoena and notice of motion filed.
- May 16. Petition to modify or quash subpoena (Mutual Home Federal Savings and Loan Association) and notice of hearing on motion filed.
- May 16. Petition to modify subpoena (Marshall Savings and Loan Association) and notice of motion filed.
- May 16. Motion to quash subpoena duces tecum (Grand Rapids Mutual Federal Savings and Loan Association), notice of hearing and proof of service filed.
- May 16. Petition to modify subpoena (Union Savings and Loan Association) filed.
- May 19. Plaintiff's affidavit of merits filed.

- May 19. Motion to quash subpoena duces tecum (Citizens Federal Savings and Loan Association of Port Huron) filed.
- May 19. Petition to quash or modify subpoena (West Side Federal Savings and Loan Association) and notice of hearing filed.
- May 19. Petition to modify subpoena (East Lansing Savings and Loan Association) and notice of hearing filed.
- May 19. Petition to modify subpoena (First Savings and Loan Association of Saginaw) filed.
- May 19. Appearance of counsel filed for Saginaw Savings and Loan Association.
- May 19, 20, 21, 22. Partially heard before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- June 20. Notice of discontinuance on behalf of plaintiff intervenor Houghton National Bank filed.
- July 14, 15, 16. Partially heard before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- Oct. 20. Motion to strike evidence filed by defendants.
- Oct. 20, 21, 22. Completed hearing before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- Oct. 27. Brief in support of motion to strike evidence filed.
- Nov. 6. Plaintiff's brief filed.
- Nov. 12. Answer to motion to strike evidence filed.
- Nov. 13. Plaintiff's proposed findings of fact filed.
- Nov. 25. Defendants' reply brief filed.
- Dec. 15. Plaintiff's reply brief filed.

1959

- Jan. 20. Opinion filed.
- Jan. 26. Judgment of no cause of action filed.
- Jan. 26. Clerk's notice of entry of order.
- Jan. 30. Claim of appeal to Michigan Supreme Court filed by plaintiff.
- Feb. 2. Certificate of the trial judge that the controversy involves more than \$500.00 filed.
- Feb. 6. Proof of service on claim of appeal filed.
- Feb. 11. Stipulation for corrections in transcript of trial filed.

## PETITION AND STATEMENT OF CLAIM

(Filed December 7, 1953)

Michigan National Bank, a banking association organized under the laws of the United States, brings in this court, as the court of exclusive jurisdiction under Compiled Laws Sec. 691.108 and files this, its verified Statement of Claim, in the form of a Petition for recovery of the sum paid on the 10th day of November, 1953, under protest, to Louis M. Nims, State Commissioner of Revenue of the State of Michigan, being a tax levied by said Commissioner pursuant to Act 9 of the Public Acts of 1953 on the privilege of ownership of each share of stock of plaintiff association, and respectfully shows:

1. Plaintiff is a National banking association organized under the laws of the United States and pursuant thereto carrying on a banking business in the State of Michigan. Plaintiff's principal banking office is in the City of Lansing with other banking offices in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron and Saginaw. Plaintiff's business of banking is carried on at all of said offices.

2. Defendant Louis M. Nims, State Commissioner of Revenue, heretofore, on May 20, 1953, gave notice in writing to plaintiff of "intent to assess" a deficiency of \$49,680.87 with interest in the sum of \$248.40, being a total of \$49,929.27, which deficiency consisted wholly of the tax levied pursuant to said Act 9 of the Public Acts of 1953, over and above the tax under the other provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 is an amendment), which tax under said other provisions had been theretofore paid by plaintiff. A copy of said notice of intent to assess said deficiency is attached hereto, marked Exhibit A.

3. Plaintiff, pursuant to its right under said Act 301 of 1939, requested a hearing on said intent to assess before or with said Department of Revenue, which hearing was had on June 12, 1953. Thereafter and on November 2, 1953, said Commissioner of Revenue by the Deputy Commissioner in writing confirmed the said intent to assess, making the assessment to date November 2, 1953. A copy of said notice confirming said assessment is hereto attached, marked Exhibit B, and a copy of the notice of assessment and demand for payment which accompanied said Exhibit B is hereto attached, marked Exhibit C.

4. Thereafter and on November 10, 1953, plaintiff paid the said sum of \$49,929.27, accompanying such payment with a protest in writing delivered therewith, of which protest a copy is hereto attached, marked Exhibit D. The grounds of said protest were:

"(a) said tax is, in the words of the statute levying the same, on the 'privilege of ownership' and the privilege of ownership of shares of national banks is not subject to tax by a state; and

(b) the tax is 'at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks' and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code."

The said grounds of protest are the same grounds as presented and asserted against said tax at said hearing held June 12, 1953, and are now hereby asserted as the grounds of this suit and for recovery back of the payment of said \$49,929.27 made as aforesaid.

5. The said ground set forth as (a) is solely a matter of law arising from a circumstance that plaintiff is organized under the laws of the United States and also is an agency of the United States. The privilege of ownership of shares of plaintiff is derived solely from the United States and is not subject to taxation by a State unless and only to the extent and in the manner which Congress by express enactment may permit. Congress has enacted Section 548 of Title XII of the United States Code, which both authorizes and limits the taxing of National banking associations and the shares thereof. Under said section the State may tax the shares *or* the banking association, but not both the shares *and* the banking association. Likewise, the State may tax the banking association measured by net income but not the shares measured by income. Likewise, the State may tax the shares *or* tax the income to the owner or holder but may not do both. Nowhere in said Section is a State permitted to levy a tax on the "privilege of ownership" of shares. The tax under said Act 9 of 1953 being invalid, Section 2 of Act 301 of 1939, as amended, levies a tax in respect of said shares of  $3\frac{1}{2}\%$  of the dividends paid by plaintiff thereon. The said sum of \$49,929.27 levied as aforesaid is the amount of tax under said Act 9 of 1953



over and above the tax of \$18,500.00 under said Section 2 of 301 of, 1939. The said tax under said Section 2 is also levied on the "privilege of ownership." Said Act 301 as originally enacted levied tax upon "the ownership of intangible personal property," but by Act 165 of the Public Acts of 1945 the same was changed to a tax upon "privilege of ownership."

6. The said ground of protest set forth as (b) is based upon subdivision 1b of said Section 548 of Title XII of the United States Code, which said subdivision, so far as here material, reads as follows:

"In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks."

Plaintiff bank at its several offices aforesaid is in direct competition with other moneyed capital of individual citizens used in making loans in or otherwise financing various and sundry transactions by said individuals in person or by agent, or in partnership or other associations, building and loan associations organized under the laws of the State of Michigan, savings and loan associations likewise organized, finance corporations organized under the laws of the State of Michigan or admitted by said State to do business therein, insurance companies likewise so organized or admitted, and other incorporated institutions with the moneyed capital of such individual citizens contributed to said institutions for such purposes and represented in the hands of individual citizens by shares of stock or other securities of said institutions. Plaintiff in particular has a large and extensive business at each of its said banking offices in

making loans secured by mortgage on real estate and at the place or location of each said office other moneyed capital is in active use by individuals and institutions as aforesaid in making such loans.

The tax on the shares of plaintiff Bank assessed as aforesaid is at a greater rate than is the tax assessed on such other moneyed capital so in competition with plaintiff in its said business as a national bank. The said assessment on the shares of plaintiff Bank here complained of is for that reason unlawful and invalid and should be so adjudged and recovery back of the sum paid on account thereof awarded.

Wherefore, judgment is prayed against the State of Michigan and said State Commissioner of Revenue for recovery of said sum of Forty-nine Thousand Nine Hundred Twenty-nine Dollars and Twenty-seven Cents (\$49,929.27) paid as tax and interest, together with all such penalties, interest and costs as will make plaintiff whole and shall be by law allowable.

Michigan National Bank  
By H. J. Stoddard, President.  
Address: Lansing, Michigan.



## EXHIBIT A

STATE OF MICHIGAN  
DEPARTMENT OF REVENUE  
LANSING

May 20, 1953

Michigan National Bank

Lansing, Michigan

Attention: Russell Fairles—Vice President

Re: Intangibles Tax Account No. 900400

Gentlemen:

This office has made an examination of your 1952 Michigan intangibles tax returns together with your statement of condition and find that under the intangibles tax statutes your return should have been computed as follows:

Tax on Deposits (as reported).....	\$100,318.24
Tax on Stock (recomputed)	
Total Pfd. Capital.....	\$ 1,000,000.00
Tax at $5\frac{1}{2}$ mills.....	5,500.00
Common Capital .....	5,000,000.00
Surplus .....	5,000,000.00
Undivided Profits .....	1,396,522.59
Total .....	\$11,396,522.59
Tax at $5\frac{1}{2}$ mills.....	62,680.87
Total Tax .....	168,499.11
Previously Paid .....	118,818.24
Deficiency .....	49,680.87
Int. at $\frac{1}{2}$ of 1% per mo. for 1 mo.....	248.40
Total Amount Due.....	\$ 49,929.27

In line with our previous correspondence and conference on this matter this department is setting up a formal intent to assess the above indicated deficiency. This intent to assess will be forwarded to you within the next few days.

Very truly, yours

Department of Revenue  
Louis M. Nims, Commissioner

(Signed) Gerrit Van Coevering, Supervisor  
Intangibles and Inheritance  
Tax Divisions

**EXHIBIT B**

**MICHIGAN  
DEPARTMENT OF REVENUE**

**LANSING**

November 2, 1953

Michigan National Bank  
Lansing, Michigan  
Attention: Howard Stoddard—President

Gentlemen:

Re: Intangibles Tax Account No. 900400  
Intent to Assess No. F 26730

Pursuant to your formal request on the above mentioned intent to assess, a hearing, as provided in the statute, was held on June 12, 1953.

This department has given careful consideration to the matters raised at the hearing and has come to the

conclusion that the position of the Michigan National Bank is not well founded and that the assessment should issue.

It is, therefore, the determination of this department that its intent to assess No. F 26730 in the total amount of \$49,929.27 is hereby confirmed and that the date on this assessment shall be considered to read November 2, 1953.

Yours very respectfully,

Clarence W. Lock  
Deputy Commissioner

EXHIBIT C

STATE OF MICHIGAN  
DEPARTMENT OF REVENUE  
LANSING, MICHIGAN

License Number

900400

Assessment issued

June 11, 1953

Penalty of

And Interest of

$\frac{1}{2}$  of 1% Per Month as Provided by Law

9-05-13

You are hereby notified of assessment by the Department of Revenue for

Michigan National Bank  
Lansing, Michigan

[X] Intangible Tax Act No. 301 of the Public Acts of 1939 as amended

Year	Month	Tax	Interest	Total
Year 1952		\$118818.24		
PAID		118818.24		
Year 1952 Per office audit		496.87		
Interest			\$248.40	
		\$49680.87	\$248.40	\$49929.27

Deficiency due per office audit.

\$49929.27

\$49929.27

## EXHIBIT D

## MICHIGAN NATIONAL BANK

Battle Creek   Flint   Grand Rapids   Lansing  
Marshall   Port Huron   Saginaw

Lansing, Michigan

November 10, 1953

Department of Revenue  
Lansing, Michigan

Dear Sirs:

Payment under protest is made concurrently herewith of the assessment of intangibles tax by Department letter of November 2, 1953, directed to the undersigned confirming Intent to Assess No. F-26730, sent with said letter. The grounds of said protest are that:

- (a) said tax is, in the words of the statute levying the same, on the "privilege of ownership" and the privilege of ownership of shares of national banks is not subject to tax by a state; and
- (b) the tax is "at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks" and in particular this Bank, and is as to this Bank violative of Section 548 of Title XII of the United States Code.

In addition to said grounds of protest herein set forth, the undersigned reserves all rights to recover such pay-

ment or any part thereof which would be available if said grounds had not been stated.

Very truly yours,

Russell Fairles.  
Vice President

**DEFENDANTS' ANSWER TO PETITION AND  
STATEMENT OF CLAIM**

(Filed December 22, 1953)

Now come the defendants named herein, State of Michigan, Department of Revenue and Louis M. Nims, State Commissioner of Revenue, by Clarence W. Lock, Deputy Commissioner of Revenue and in answer to the plaintiff's petition and statement of claim filed herein admits, denies and alleges as follows:

1. In answer to paragraph enumerated 1, the defendants admit the statements contained therein.

2. In answer to paragraph enumerated 2, the defendants admit that defendant Louis M. Nims, State Commissioner of Revenue, heretofore on May 20, 1953, gave notice in writing to plaintiff of "intent to assess" a deficiency of \$49,680.87 with interest in the sum of \$248.80, being a total of \$49,929.27, which deficiency was levied pursuant to said Act 9 of the Public Acts of 1953, and further admit that a copy of said notice of intent to assess said deficiency is attached to the plaintiff's petition and statement of claim marked as Exhibit A.

In further answer to said paragraph, the defendants deny each and every other allegation contained therein

18a     *Answer to Petition and Statement of Claim*

and affirmatively assert that the total tax levied against the plaintiff for intangibles tax for the year 1953 for the tax on the owners of shares of stock in the Michigan National Bank (plaintiff herein) was in the amount of \$68,180.87; and

Further, that the defendants allowed a credit in the amount of \$18,500, which represented tax previously paid under Act 301, P. A. 1939, as amended.

3. In answer to paragraph enumerated 3, the defendants admit the statements contained therein.

4. In answer to paragraph enumerated 4 of the plaintiff's petition and statement of claim, the defendants admit that on November 30, 1953, the plaintiff paid the sum of \$49,929.27 under protest in writing, a copy of which protest is attached to plaintiff's petition and statement of claim and marked as Exhibit D and that the grounds of said protest were as set forth in paragraphs enumerated (a) and (b) of paragraph enumerated 4 of plaintiff's petition and statement of claim.

In further answer to paragraph enumerated 4 of plaintiff's petition and statement of claim the defendants neither admit nor deny the remaining allegations contained therein and assert that the alleged grounds of protest set forth in paragraphs (a) and (b) of paragraph 4 of the petition and statement of claim (being the same as the paragraphs enumerated (a) and (b) of Exhibit D) constitute erroneous conclusions of law and do not constitute proper facts requiring answer but are, nevertheless, completely denied by the defendants in this answer.

5. In answer to paragraph enumerated 5 of the plaintiff's petition and statement of claim, the defendants neither admit nor deny the matters set forth therein, but leave plaintiff to its proof to the extent deemed material

and further assert that such matters set forth in said paragraph constitute conclusions of law and are not properly within the province of this answer.

In further answer to said paragraph enumerated 5, the defendants assert that notwithstanding the invalid conclusions of law contained therein, the defendants properly required and the plaintiff properly paid, in accordance with the applicable provisions of the Michigan intangibles tax act, the sum of \$49,929.27, as imposed by section 2a, Act 301, P. A. 1939, as amended by Act No. 9, P. A. 1953 and such payment as required is legal and valid in every respect.

6. In answer to paragraph enumerated 6 of the plaintiff's petition and statement of claim, the defendants neither admit nor deny all the matters contained therein, except deny that the tax on the shares of plaintiff Bank assessed as aforesaid is at a greater rate than is the tax assessed on such other moneyed capital so in competition with plaintiff in its said business as a National bank; and that the said assessment on the share of plaintiff bank here complained of is for that reason unlawful and invalid and should be so adjudged and recovery back of the sum paid on account thereof awarded; and

Further, that plaintiff is entitled to any judgment whatsoever.

As to the allegations set forth in plaintiff's paragraph enumerated 6 that are neither admitted nor denied, defendants assert that they constitute factual and legal conclusions not properly substantiated by other allegations contained in the plaintiff's petition and statement of claim and are set forth to support factual and legal conclusions and, to the extent they assert such factual and legal conclusions, they are denied by the defendants.



20a *Answer to Petition and Statement of Claim*

In further answer to paragraph enumerated 6, the defendants assert that section 2a of Act 301, P. A. 1939, as amended, imposes a legal and permissible form of taxation the owners shares of stock of the plaintiff; and

That, pursuant to such act there was properly due the defendants the assessed sum of \$49,929.27 for the intangibles tax on plaintiff's shares of stock for the year 1953 and that the plaintiff, in paying this amount of money to the defendant, Department of Revenue of the State of Michigan, did so in accordance with the legal and valid provisions of Act 301, P. A. 1939, as amended by Act No. 9, P. A. 1953.

Wherefore, the judgment is prayed against the Michigan National Bank, plaintiff, of no cause of action, with costs to the defendants.

Michigan Department of Revenue  
By Clarence W. Lock  
Deputy Commissioner

Frank G. Millard,  
Attorney General,  
T. Carl Holbrook,  
Assistant Attorney General,  
Attorneys for Defendants,  
State Capitol Building,  
Lansing, Michigan.

**DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT OF NO CAUSE  
OF ACTION**

(Filed May 7, 1958)

Now come the above defendants by their attorneys, Paul L. Adams, Attorney General, T. Carl Holbrook and William D. Dexter, Assistants Attorney General, and move this Honorable Court for the entry of a summary judgment of no cause of action in favor of defendants and against the plaintiff and plaintiff intervenors and say:

1. That this is a statutory cause of action authorized by the Court of Claims Act [P. A. 1939, No. 135, as amended (C. L. §691.101 et seq.; M. S. A. §27.3548(1) et seq.)] for the recovery of intangibles taxes paid by plaintiff and plaintiff intervenors for the intangibles tax levied pursuant to Act No. 9 of the Public Acts of 1953, for the tax assessed pursuant to said act for the year 1952 in the amount of \$49,929.27 for the principal plaintiff and an unknown amount for the intervening plaintiffs.
2. That defendants are entitled to a judgment of no cause of action against plaintiff and plaintiff intervenors as a matter of law upon the facts set forth in the pleadings, depositions and files in this cause, including those statements and admissions of plaintiff's counsel contained in his letter to this Court dated December 10, 1957, a copy of which is appended hereto and made a part of this motion.
3. That the taxes for which recovery is sought were paid to the defendant Department of Revenue pursuant

to the provisions of the Michigan Intangibles Tax Statute [P. A. 1939, No. 301, as amended by P. A. 1953, No. 9 (C. L. S. §205.131 et seq.; M. S. A. §7.556(1) et seq.)] and were properly due and owing, as set forth in the pleadings in this cause, and said taxes were paid and collected without violation of any statutory or constitutional rights, privileges or immunities of plaintiff and plaintiff intervenors.

4. That plaintiff and plaintiff intervenors are not entitled to a refund for any taxes paid or for a judgment in any amount and that there are no issues of fact which, if resolved in favor of plaintiff or plaintiff intervenors, would entitle them to judgment and that plaintiff and plaintiff intervenors have no cause of action in law, and more particularly because the plaintiff's allegation that P. A. 1953, No. 9, subjects to tax plaintiff's shares of stock in violation of §5219 of the United States Code Annotated because

“(a) said tax is, in the words of the statute levying the same, on the ‘privilege of ownership’ and the privilege of ownership of shares of national banks is not subject to tax by a state; and

“(b) the tax is ‘at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks’ and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code.”

is without merit.

5. Defendants make this motion without conceding the propriety of intervention of plaintiff intervenors in this cause and their assertion of either a joint or several right of recovery with plaintiff, Michigan National Bank, herein.

Wherefore, defendants pray that a summary judgment of no cause of action be granted against plaintiff and plaintiff intervenors.

Paul L. Adams,  
Attorney General,  
T. Carl Holbrook,  
William D. Dexter,  
Assistants Attorney General,  
(Sgd.) William D. Dexter,  
Assistant Attorney General,  
Attorneys for Defendants.

State Capitol,  
Lansing, Michigan.

### AFFIDAVIT OF CLARENCE W. LOCK

Clarence W. Lock, being duly sworn, deposes and says that he is a Deputy Commissioner of the Department of Revenue of the State of Michigan and that he is duly authorized to make this affidavit on behalf of the defendants; that he makes this affidavit in support of defendants' motion for summary judgment of no cause of action against the plaintiff and plaintiff intervenors in the above-entitled cause; that all of the facts set forth herein are within his personal knowledge; that he is not disqualified from being a witness in this cause and that if he is sworn as a witness, he can competently testify to the facts hereinafter set forth; and that the facts entitling defendants to a summary judgment of no cause of action against the plaintiff and plaintiff intervenors are as follows:

1. That on the facts as set forth in the pleadings together with the exhibits attached thereto and on admissions of counsel, heretofore filed in this cause, deponent believes that defendants are entitled to a judgment of no cause of action against the plaintiff and plaintiff intervenors as a matter of law inasmuch as there are no issues of fact, which, if resolved in favor of plaintiff or plaintiff intervenors, would entitle them to judgment.

2. That plaintiff brings this action to recover from defendants intangibles taxes it has paid for the year 1952, in the amount of \$49,929.27, pursuant to the provisions of P. A. 1953, No. 9, and that plaintiff bases its right to recover on the ground that said statute violates §5219 of the United States Code Annotated in that said tax is levied upon the privilege of ownership of its shares of its stock and that building and loan associations, both state and federal, and their activities are included within the scope of §5219 of the United States Code Annotated and that such institutions are included within the phrase

“other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks • • •”

and that the moneyed capital of such institutions is taxed at a lesser rate than is assessed on the capital of plaintiff.

3. That Act No. 9, P. A. 1953, does not impose an invalid tax on plaintiff under the allegations, pleadings and admissions in this cause because, as a matter of law, state and federal building, savings and loan associations are not within the scope of §5219 of the United States Code Annotated and, therefore, defendants are entitled

to a summary judgment of no cause of action against plaintiff and plaintiff intervenors.

Further, deponent sayeth not.

Clarence W. Lock.

Subscribed and sworn to before me this 6th day of May, A. D. 1958.

Leona M. Hudnut,  
Notary Public, Ingham County, Michigan.  
My commission expires October 15, 1960.

**AFFIDAVIT OF MERITS\***

(Filed May 19, 1958)

State of Michigan,  
County of Wayne—ss.

Russell Fairles, being first duly sworn, deposes and says that he is Vice President of Michigan National Bank, a national banking association organized under the laws of the United States, one of the plaintiffs in the above entitled cause, and makes this affidavit for the purpose of preventing the entry of a summary judgment against Michigan National Bank and the intervening plaintiffs of no cause of action in favor of defendants; that all the facts herein set forth are within his personal knowledge, except for the following:

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\*To obviate unnecessary duplication, exhibits referred to in this Affidavit of Merits are not printed at length as part thereof since such exhibits were offered in virtually the same form (with few variations) at the trial under the same exhibit numbers as were used in the Affidavit of Merits. Such trial exhibits, printed as part of this appendix, may be referred to in reading the Affidavit of Merits.

Paragraph 6, the first two sub-paragraphs of paragraph 7, such part of paragraph 8 as relates to the intervening plaintiffs, paragraph 10, paragraph 18, and paragraph 19;

as to paragraph 11, deponent says that the matters therein contained are true to the best of his knowledge and belief based upon inquiries made by him or on his behalf of the said Secretary of State and the Michigan Corporation and Securities Commission; as to paragraph 14, deponent says that the contents thereof are true and correct to the best of his knowledge and belief, said reports having been prepared by him, or under his supervision, based upon published reports of condition of such associations appearing in their respective local newspapers, such published reports having been regularly received by him, from which he or persons under his supervision prepared the exhibits mentioned in said paragraph 14; that deponent is not disqualified from being a witness, and that if sworn as a witness, he can competently testify to the facts contained in this affidavit, with the exceptions heretofore noted.

Further deponent deposes and says that as to the excepted matters, plaintiff is unable to obtain affidavits of persons who can competently testify thereto and to the best of his knowledge and belief, the matters set forth in the following paragraphs may be completely proven by the following evidence and persons, and plaintiff intends to and asks leave to proffer such proof upon the motion for summary judgment.

Paragraph 6 relates to matters within the knowledge of the intervening plaintiffs and the defendants and the intervening plaintiffs if given an opportunity can and will file an Affidavit of Merits support-



ing the allegations herein made and can competently testify to the matters therein set forth.

Paragraph 7 relates to matters within the knowledge of certain officers of defendant State of Michigan, to wit: the Michigan Corporation and Securities Commissioner and the officer in charge of the Building and Loan Division of the Secretary of State; these persons have been subpoenaed to testify, and if permitted to testify pursuant to such subpoenas, such officers will testify in support of the matters set forth in said paragraph 7.

Paragraph 8 relates to matters, insofar as the intervening plaintiffs are concerned, which are within the knowledge of said intervening plaintiffs and of the defendants, and if given an opportunity, said intervening plaintiffs will file an affidavit in support of the matters contained in said paragraph relating to each of them and can competently testify to the matters therein contained.

Paragraph 10 relates to matters within the knowledge of intervening plaintiffs and the savings and/or building and loan associations described in said paragraphs; if given an opportunity, the intervening plaintiffs will file an affidavit supporting the matters therein stated, and, further, if given the opportunity to call the managing officers of said savings and/or building and loan associations as witnesses, it is believed that they can and will competently testify in support of the matters set forth in said paragraph 10.

Paragraph 11 relates to matters within the knowledge of the Corporation and Securities Commission and the Secretary of State of the State of Michi-



gan, whose affidavits cannot be obtained. The Corporation and Securities Commissioner and the officer in charge of the Building and Loan Association Division of the Secretary of State have been subpoenaed, and if permitted to testify at the hearing on defendants' motion, would testify in support of the matters set forth in said paragraph 11. The matters set forth in said paragraph are also within the knowledge of the officers of the various savings and/or building and loan associations above mentioned, whose affidavits cannot be obtained by plaintiff; such officers have been subpoenaed to testify, and if permitted could competently testify as indicated in said paragraph if sworn as witnesses; as to certain associations, plaintiff has taken the depositions of their managing officers, and their testimony and the accompanying exhibits support the allegations of said paragraph 11.

Paragraph 14 contains matters within the knowledge of the savings and loan associations listed and is also a matter of public record, said reports of financial condition referred to in said paragraph being required by law to be published and being in fact published by such associations. In the case of reports of condition as of June 30, 1952, referred to in said paragraph, such reports are public records competent to prove the financial condition of the associations for the additional reason that they are published by the Secretary of State as a part of his report, required by law, on the financial condition of each such association; copies from said annual report of the statement of condition of each domestic association listed has previously been served upon defendants and filed with plaintiff's

Notice of Intention to offer such reports as exhibits at the trial; further plaintiff is unable to secure affidavits from the associations listed; but believes that if called as witnesses the managing officers of such associations would competently testify as indicated in said paragraph; each of the managing officers of the said association and the associations have been subpoenaed to appear as witnesses at the trial of this cause; as to certain associations, depositions have been taken of their managing officers, and their testimony and supporting exhibits support the facts as stated in said paragraph as to their associations.

Paragraph 18 and 19 contains matters based upon public records and reports of Government agencies, to wit: the Federal Home Loan Bank Board, the Building and Loan Division of the Secretary of State, and the Annual Report of the Comptroller of the Currency of the United States, all of which records and reports are admissible as evidence and competent to prove the facts set forth in said paragraphs 18 and 19; also the matters therein stated are in part competently proven by the said depositions of certain savings and loan associations heretofore taken and the exhibits accompanying said depositions; further deponent believes that the matters contained in said paragraphs 18 and 19 would be competently testified to by the managing officers of the savings and loan associations listed above; deponent has been unable to secure affidavits from such associations or officers, but each of said associations and their managing officers have been subpoenaed to testify at the trial of this cause as to the matters herein set forth.

That all the facts pertaining to the action in this cause have been fully and fairly stated to Butzel, Eaman, Long, Gust & Kennedy, who are plaintiff's attorneys and attorneys for the intervening plaintiffs, and that deponent, upon such statement and the other evidence above referred to, has been advised by said attorneys that plaintiff and intervening plaintiffs have a meritorious cause of action; that the facts upon which plaintiff's cause of action is based, are as follows:

1. Plaintiff, Michigan National Bank is a national banking association, with its principal office in the City of Lansing, Michigan; and with other banking offices in the State of Michigan located in the following cities: Battle Creek, Flint, Grand Rapids, Marshall, Port Huron and Saginaw.

2. Intervening plaintiffs are also national banking associations whose principal offices are located in the State of Michigan as follows: Houghton National Bank, at Houghton, Michigan; Commercial National Bank of Iron Mountain, at Iron Mountain, Michigan; National Bank of Jackson, at Jackson, Michigan; First National Bank and Trust Company of Kalamazoo, at Kalamazoo, Michigan; First National Bank, at Three Rivers, Michigan, and The National Bank of Wyandotte, at Wyandotte, Michigan.

3. Plaintiff's and intervening plaintiffs' banking offices are located in twelve different counties in the State of Michigan; said cities and counties are located throughout the state, and are amongst the most heavily populated cities and counties in the state.

4. Pursuant to Act 9 of the Public Acts of Michigan of 1953, for the year 1952 (and similarly thereafter each year to the date hereof) defendant, State of Michigan,

levied and collected a tax at the rate of  $5\frac{1}{2}$  mills (\$5.50 per \$1,000.00) "on the privilege of ownership of each . . . share of stock" of plaintiff and of the intervening plaintiffs based on their respective "capital accounts", consisting of their capital, surplus and undivided profits, as of December 31, 1952.

5. Prior thereto plaintiff, Michigan National Bank, filed its intangibles tax return, a photostatic copy of which is appended hereto marked Exhibit 1, pursuant to the provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 of the Public Acts of 1953 is an amendment), and paid to defendants a total tax on deposits of \$100,318.24, plus a total tax on the shares of stock of said plaintiff of \$18,500.00, for a total payment of \$118,818.24. Said tax so paid was for the calendar year 1952, based upon plaintiff's statement of condition as of December 31, 1952.

Subsequently, defendant, Louis M. Nims, State Commissioner of Revenue, on May 20, 1953, gave notice in writing to plaintiff, Michigan National Bank, of "intent to assess" a deficiency of \$49,680.87, with interest in the sum of \$248.40, being a total of \$49,929.27, which deficiency consisted wholly of the tax levied pursuant to said Act 9 of the Public Acts of 1953, over and above the tax under the other provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 is an amendment), which tax under said other provisions had theretofore been paid by plaintiff. A copy of said notice of intent to assess said deficiency is attached to plaintiff's Petition and Statement of Claim as Exhibit A heretofore filed herein, and is incorporated herein by reference.

Plaintiff, pursuant to its right under said Act 301 of 1939, requested a hearing on said intent to assess be-

fore or with said Department of Revenue, which hearing was had on June 12, 1953. Thereafter and on November 2, 1953, said Commissioner of Revenue by the Deputy Commissioner in writing confirmed the said intent to assess, making the assessment to date November 2, 1953. A copy of said notice confirming said assessment is attached to plaintiff's Petition and Statement of Claim as Exhibit B and is incorporated herein by reference, and a copy of the notice of assessment and demand for payment which accompanied said Exhibit B is attached to plaintiff's Petition and Statement of Claim as Exhibit C and is incorporated herein by reference.

Thereafter, and on November 10, 1953, plaintiff paid the said sum of \$49,929.27, accompanying such payment with a protest in writing delivered therewith, of which protest a copy is attached to plaintiff's Petition and Statement of Claim as Exhibit D and is incorporated herein by reference. The grounds of said protest were:

“(a) said tax is, in the words of the statute levying the same, on the ‘privilege of ownership’ and the privilege of ownership of shares of national banks is not subject to tax by a state; and

(b) the tax is ‘at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks’ and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code.”

The said grounds of protest were the same grounds as presented and asserted against said tax at said hearing held June 12, 1953.

Simultaneously upon the making of the aforesaid payment under protest on November 10, 1953, plaintiff,

Michigan National Bank, filed its intangibles tax return under the provisions of said Act 9 of the Public Acts of 1953, a copy of which is appended hereto marked Exhibit 2, based upon its capital account as of December 31, 1952, which return showed a total tax due on said stock of plaintiff of \$68,180.87, instead of the tax previously assessed as shown in Exhibit 1 of \$18,500.00, which, under said Act 9, was "for the privilege of ownership" of said stock.

6. Similarly, each of the intervening plaintiffs paid the intangibles tax upon its deposits and upon its shares of stock under the provisions of Act 301 of the Public Acts of 1939, and thereafter, following the procedures set forth in the Intervenor's Petition and Statement of Claim, made payments of the amounts assessed and levied against their shares of stock by defendant, Louis M. Nims, State Commissioner of Revenue, all as set forth in the aforesaid Intervenor's Petition and Statement of Claim heretofore filed in this cause.

7. During the same period defendant, State of Michigan, levied and collected from certain domestic associations (or their shareholders) in Michigan, known as building and/or savings and loan associations, a tax for the calendar year 1952 of only  $1/25$  of 1% (.40 cents per \$1,000.00) on the paid-in value of their shares of stock, which excluded the surplus, undivided profits and legal reserves of such associations (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.556(2) and  $1/4$  mill (.25 cents per \$1,000.00) on their capital and legal reserve, which excluded the surplus, undivided profits and other reserves of such associations (pursuant to Sec. 4a of Act 85 of the Public Acts of 1921, as amended by Act No. 33 of the Public Acts of 1927 (C. L. '48, Sec. 450.304A; M. S. A. Sec. 21.206)) as of June 30, 1952, and also as of



June 30, 1953, or a total tax of .65 cents per \$1,000.00 on their capital and shares.

For the calendar year 1952 the defendant, State of Michigan, levied and collected from certain federal savings and loan associations (or their shareholders), organized under the Federal Home Owners Loan Act and doing business in Michigan, a tax of  $1/25$  of 1% (.40 cents per \$1,000.00) on the paid-in value of their shares of stock, which excluded surplus, undivided profits and legal reserves of such associations (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.556(2)).

Hence, for the year 1952, defendant, State of Michigan, levied and collected a tax on national bank shares (including those of plaintiff and intervening plaintiffs) at a rate of \$5.50 per \$1,000.00, which rate was more than eight (8) times the equivalent tax rate on domestic building and/or savings and loan associations (.65 cents per \$1,000.00) and more than thirteen (13) times the equivalent tax rate on federal savings and loan associations (.40 cents per \$1,000.00). For the reasons hereinafter set forth, such building and/or savings and loan associations or their shares constituted "moneyed capital" employed in competition with plaintiff national bank and intervening national banks in the localities where they did business, and the rate of taxation of national bank shares (including those of plaintiff and intervening plaintiffs) was clearly and substantially higher than that levied and collected from such other "moneyed capital" represented by such building and/or savings and loan associations or their shares.

8. In addition to the foregoing taxes assessed upon its shares of stock and collected from plaintiff, Michigan National Bank, and from intervening plaintiffs, de-



endant, State of Michigan, also levied and collected from said plaintiff (see Exhibit 1) and intervening plaintiffs, for the calendar year 1952, an intangibles tax pursuant to Sec. 2 of Act 301 of the Public Acts of 1939 (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.56(2)) at the rate of  $1/25$  of 1% on their respective deposits, as of December 31, 1952, whereas savings and/or building and loan associations not having deposits nor permitted to have deposits were not subject to any such tax.

The State of Michigan by law imposes no other taxes upon and collects no tax from any of said savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs at a rate different than that imposed upon and collected from plaintiff and intervening plaintiffs, except that said savings and/or building and loan associations are subject to the personal property tax (C. L. '48, Sec. 211.8 et seq.; M. S. A. Sec. 7.8 et seq.), to which national banks are not subject; but in practice none of said savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs were assessed or required to pay any such tax for the year 1952.

9. There were located in 1952 and prior thereto in each of the cities and localities where plaintiff, Michigan National Bank, had its offices and did business, the following domestic and federal savings and/or building and loan associations:

<u>City</u>	<u>Bank</u>	<u>Savings and Loan Associations</u>
<i>Battle Creek</i>	Michigan National Bank 1 W. Michigan Ave.	<i>Calhoun Federal Savings &amp; Loan</i> (federal) 15 Capital Ave., N. E. <i>Industrial Savings &amp; Loan</i> (state) 8 W. Michigan Ave.
<i>Flint</i>	Michigan National Bank 503 S. Saginaw St.	<i>First Federal Savings &amp; Loan</i> (federal) 126 W. Kearsley St. <i>Detroit &amp; Northern Savings &amp; Loan</i> (state) 529 Harrison
<i>Grand Rapids</i>	Michigan National Bank	<i>Grand Rapids Mutual Federal Savings &amp; Loan</i> (federal) 201 Monroe Ave. N. W. <i>Mutual Home Federal Savings &amp; Loan</i> (federal) 88 Market Ave. N. W. <i>West Side Federal Savings &amp; Loan</i> (federal) 410 Bridge St. N. W.
<i>Lansing</i>	Michigan National Bank 124 W. Allegan	<i>Capitol Savings &amp; Loan</i> (state) 112-4 E. Allegan <i>Lansing Savings &amp; Loan</i> (state) 117 W. Allegan <i>Union Bldg. &amp; Loan</i> (state) 121 W. Allegan <i>East Lansing Savings &amp; Loan</i> (state) 303 Abbott Road
<i>Marshall</i>	Michigan National Bank 124 W. Michigan	<i>Marshall Savings &amp; Loan</i> (state) 227 E. Michigan <i>Homestead Savings &amp; Loan</i> (state) 403 S. Superior, Albion, Mich.
<i>Port Huron</i>	Michigan National Bank 800 Military St.	<i>Citizens Federal Savings &amp; Loan</i> (federal) 511 Water St.
<i>Saginaw</i>	Michigan National Bank 501 Lapeer St.	<i>First Savings &amp; Loan</i> (state) 124 S. Jefferson <i>Saginaw Savings &amp; Loan</i> (state) Michigan Ave. at Cass

10. There were located in 1952 and prior thereto, in each of the localities where intervening plaintiffs had their offices and did business, the following domestic and federal building and/or savings and loan associations:

<u>City</u>	<u>Bank</u>	<u>Savings and Loan Associations</u>
Houghton	Houghton National Bank	Detroit and Northern Savings & Loan (state) 200 Quincy St., Hancock, Mich.
Iron Mountain	Commercial National Bank of Iron Mountain	Detroit and Northern Savings & Loan (state) 200 Quincy St., Hancock, Mich. Iron River Savings & Loan (state) 425 Third Ave., Iron River, Mich.
Jackson	National Bank of Jackson 120 W. Michigan Ave.	First Federal Savings & Loan (federal) 131 South Mechanic St. Security Savings & Loan (state) Francis St. at Otsego Ave.
Kalamazoo	First National Bank and Trust Company of Kalamazoo 108 E. Michigan Avenue	Fidelity Federal Savings & Loan (federal) 315 S. Burdick St. First Federal Savings & Loan (federal) 346 W. Michigan Ave. Kalamazoo Building and Savings (state) 215 E. Michigan Ave.
Three Rivers	First National Bank	Three Rivers Savings & Loan (state) 101 N. Main St.
Wyandotte	The National Bank of Wyandotte 3058 First St.	Down River Federal Savings & Loan (federal) 2959 Biddle Ave. Guaranty Savings & Loan (state) 2913 Biddle Ave.

11. Since defendants, in their Statement of Position (pp. 8, 14), heretofore filed herein, have asserted that the tax rate upon savings and/or building and loan associations was not discriminatory in their favor be-

cause they "were subject to an annual privilege tax equal to 4 mills of the amount of their capital and surplus" under Section 4 of Act 183 of the Public Acts of 1952 (C. L. '48, Sec. 450.304; M. S. A. Sec. 21.205) instead of  $\frac{1}{4}$  mill per dollar of capital and legal reserve, under Section 4a of said Act, as plaintiff and intervening plaintiffs contend, the following is called to the Court's attention.

Neither the Michigan Corporation and Securities Commission nor the Secretary of State of Michigan has ever collected a tax of 4 mills upon the capital and surplus of any savings and/or building and loan association doing business in the State of Michigan (including those associations listed in Paragraphs 9 and 10 hereof). Nor has the Michigan Corporation and Securities Commission, since its inception in 1935 to the date hereof, ever received any reports or collected any fees or taxes of any kind whatsoever from any savings and/or building and loan associations under Act 85 of the Public Acts of 1921, as amended, or otherwise. The only annual privilege tax that has ever been collected by the State of Michigan from any savings and/or building and loan association (including those associations listed in Paragraphs 9 and 10 hereof) from 1927 to date has been collected by the Secretary of State of Michigan annually at the rate of  $\frac{1}{4}$  of a mill upon their capital and legal reserve, and this tax was not assessed upon nor collected from any federal savings and/or building and loan association doing business in Michigan prior to 1954 (including those associations listed in Paragraphs 9 and 10 hereof).

Since 1927 to the date hereof, neither the Secretary of State of Michigan nor the Michigan Corporation and Securities Commission ever attempted to assess, collect

or ~~levy~~ any annual privilege tax from any saving and/or ~~building~~ and loan association at a greater rate than  $\frac{1}{4}$  of a mill on their capital and legal reserve, as was specifically provided for by Section 4a of said Act 85 of the Public Acts of 1921, as amended by Act 33 of the Public Acts of 1927.

Such long and consistent interpretation and administration of the law in question by those State officials charged with the administration thereof, if not decisive of the legislative intent, is at all events, given great weight in the construction and interpretation of such law (*People v. Michigan Central Railway Co.*, 145 Mich. 140, 149; *Boyer-Campbell Co. v. Fry*, 271 Mich. 282, 296; *Commissioner v. South Texas Co.*, 333 U. S. 496, 501).

Even if the annual privilege tax law provided for a payment by savings and/or building and loan associations of an annual privilege fee at a rate such as defendants contend, nevertheless, since in practice and in fact the State of Michigan and its officials administering and applying said law have only collected and sought to collect an annual privilege tax for 1952 from state associations of  $\frac{1}{4}$  of a mill, as aforesaid, and no tax at all from such federal associations, there is a clear and substantial discrimination in the rate of taxation on the shares of national banks (including those of plaintiff and intervening plaintiffs), and in favor of moneyed capital of said associations in substantial competition with them, as will be hereinafter fully set forth (*Whitbeck v. Mercantile National Bank of Cleveland*, 127 U. S. 193; *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239, 241-5).

12. Plaintiff, Michigan National Bank, as a national banking association organized under the laws of the United States, is required by law to file with the Comptroller of the Currency of the United States a sworn re-

port of its condition at the close of business on December 31st of each year. Such a report of condition was filed as at the close of business on December 31, 1952, showing the condition of the plaintiff as of that date. A photostatic copy of such report is attached hereto marked Exhibit 3. Such report truly and correctly reflected the financial condition of plaintiff at the close of the calendar year 1952, which is the year involved in this litigation. Further, such report was the report used by plaintiff in the preparation of its Michigan intangibles tax return( Exhibit 2) as required by said Act 9 of the Public Acts of 1953 (which is the Act in question in this suit) said report being " \* \* \* the report as of the latest date during the year for which the tax is imposed (1952) prepared by such \* \* \* bank \* \* \* for the public authority having general regulatory supervision over it \* \* \* ."

As appears from said Exhibit 3 on line 6 thereof, plaintiff as at December 31, 1952, had total loans and discounts (including \$8,266.07 overdrafts) of \$146,411,387.26. Schedule A, appearing on the reverse side of said Exhibit 3, breaks down said total loans and discounts. Said Schedule A shows that plaintiff as at December 31, 1952, had the following real estate loans (Schedule A, line 6(a), 6(b)(1), (2), (3) and 6(c)):

6(a)	Real state loans secured by farm land (including improvements) ..	\$ 445,462.56
(b)	Real estate loans secured by residential properties (other than farm)	
(1)	Insured by Federal Housing Administration .....	26,944,797.52
(2)	Insured or guaranteed by Veterans Administration .....	9,289,591.61
(3)	Not insured or guaranteed by FHA or VA .....	15,185,470.71
(c)	Real estate loans secured by other properties .....	10,209,699.79
	Total real estate loans.....	\$62,975,028.19

As appears from said report and as was in fact the case, of plaintiff's total loan business (before deduction for bad debt reserve), \$62,075,029.19, or approximately 42% of its total loan business, consisted of real estate loans; further, of said total real estate loans, \$51,419,859.84 or approximately 83% of said total real estate loans, were loans secured by residential properties (other than farm).

13. Each of said banking offices of plaintiff, Michigan National Bank, were substantially engaged in their locality in the business of loaning money on the security of real estate, primarily residential property. Each banking office of plaintiff, in the regular and usual course of its business, prepared each month a statement of its condition, which it was required to and did forward to the principal office of plaintiff at Lansing, Michigan. Such reports were made immediately after the end of



each month and truly and correctly reported the financial condition of each office as of the last day of the month reported on. Attached hereto are photostatic copies of financial reports of each of plaintiff's offices as of December 31, 1952, marked as follows: Battle Creek (Exhibit 4 a), Flint (Exhibit 4 b), Grand Rapids (Exhibit 4 c), Lansing (Exhibit 4 d), Marshall (Exhibit 4 e), Port Huron (Exhibit 4 f) and Saginaw (Exhibit 4 g). Said Exhibits show the following data as regards each office, with respect to real estate loans as of December 31, 1952:

*Battle Creek (Exhibit 4 a)*

F. H. A. Real Estate Loans .....	\$ 4,644,691.16
Regular Real Estate Loans .....	5,800,804.59
	<hr/>
Total Real Estate Loans .....	\$10,455,495.75

*Flint (Exhibit 4 b)*

F. H. A. Real Estate Loans .....	\$ 6,561,609.20
Regular Real Estate Loans .....	5,489,040.97
	<hr/>
Total Real Estate Loans .....	\$12,050,650.17

*Grand Rapids (Exhibit 4 c)*

F. H. A. Real Estate Loans .....	\$ 4,559,749.21
Regular Real Estate Loans .....	2,831,531.64
	<hr/>
Total Real Estate Loans .....	\$ 7,391,280.85

*Lansing (Exhibit 4 d)*

F. H. A. Real Estate Loans .....	\$ 5,991,894.98
Regular Real Estate Loans .....	5,103,184.57
	<hr/>
Total Real Estate Loans .....	\$11,095,079.55

*Affidavit of Merits*

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*Marshall (Exhibit 4 e)*

F. H. A. Real Estate Loans.....	\$ 485,189.29
Regular Real Estate Loans.....	\$ 1,248,271.08
	<hr/>
	\$ 1,733,460.37

*Port Huron (Exhibit 4 f)*

F. H. A. Real Estate Loans.....	\$ 2,696,120.98
Regular Real Estate Loans.....	7,211,271.43
	<hr/>

Total Real Estate Loans..... \$ 9,907,392.41

*Saginaw (Exhibit 4 g)*

F. H. A. Real Estate Loans.....	\$ 2,005,542.70
Regular Real Estate Loans.....	7,132,551.38
	<hr/>

Total Real Estate Loans..... \$ 9,138,094.08

As used in Exhibits 4 a through g, the term "F. H. A. Real Estate Loans" covered all real estate loans secured by residential properties (other than farm) insured by the Federal Housing Administration, which loans are more fully described hereinafter, and is the same as item 6.(b)(1) of Schedule A to Exhibit 3. As used in said Exhibits 4 a through 4 g, the term "Regular Real Estate Loans" covered all real estate loans secured by residential properties (other than farm) insured or guaranteed by Veterans Administration and those real estate loans on such property not insured or guaranteed by F. H. A. or V. A. or the same as items 6 (b) (2). and (3) of Schedule A to Exhibit 3.

14. The savings and/or building and loan associations, both domestic and federal, are required by law and

do in fact publish reports of their financial condition, which reports show, among other items, their real estate loans outstanding, secured either by mortgages on real estate or land contracts as of the date of the report. The associations listed in paragraph 9 above and which were doing business in 1952 in the localities where plaintiff's banking offices were located, published said reports showing their respective financial conditions as of December 31, 1952. Attached hereto are summaries of such reports, showing the financial condition of each association as of December 31 of each year from 1950 through 1957, including December 31, 1952 (except where otherwise indicated); such summaries are marked Exhibits 5a through 5p. As appears from these exhibits, such associations held real estate mortgages and land contracts in the following amounts as of December 31, 1952.

*Battle Creek*

Calhoun Federal Savings & Loan (Exhibit 5a) .....	\$ 9,218,354
Industrial (now Peoples) Savings & Loan (Exhibit 5b) .....	5,595,285
Total .....	\$ 14,813,639

*Flint*

First Federal Savings & Loan (Exhibit 5c) \$	6,455,542
*Detroit and Northern Savings & Loan (Exhibit 5d) .....	21,020,355
Total .....	\$ 27,475,807

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\*Detroit and Northern Savings and Loan Association also does a mortgage business in cities other than Flint, Michigan, the exact extent of which is not known; however, its mortgage business in the Flint area represents a substantial part of the above figure.

*Affidavit of Merits*

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*Grand Rapids*

Grand Rapids Mutual Federal Savings & Loan (Exhibit 5e) .....	\$ 13,180,745.
Mutual Home Federal Savings & Loan (Exhibit 5f) .....	11,555,850
West Side Federal Savings & Loan (Exhibit 5g) .....	3,548,253
Total .....	\$ 28,284,848

*Lansing*

**Capitol Savings & Loan (Exhibit 5h)...	\$ 18,785,443
Union Building & Loan (Exhibit 5i).....	5,139,076
Lansing Savings & Loan (Exhibit 5j) (subsequently merged with Union Savings & Loan) .....	1,259,325
East Lansing Savings & Loan (Exhibit 5k) (as of June 30, 1952).....	3,484,401
Total .....	\$ 28,668,245

*Marshall*

Marshall Savings & Loan (Exhibit 5l).....	\$ 639,623
Homestead Savings & Loan (Exhibit 5m) Albion, Michigan (as of June 30, 1952) .....	604,727
Total .....	\$ 1,244,350

\*\*Capitol Savings and Loan also does a mortgage business in Detroit and Pontiac, Michigan, the exact extent of which is not known; however, its mortgage business in the Lansing area represents a substantial part of the above figure.

*Port Huron*

Citizens Federal Savings & Loan (Exhibit  
5n) ..... \$ 6,481,879

*Saginaw*

Saginaw Savings & Loan (Exhibit 5o).... \$ 6,249,582  
First Savings & Loan (Exhibit 5p) (as of  
June 30, 1952)..... 12,975,551

Total ..... \$ 19,225,133

Total Mortgages and Land Contracts  
of all Associations ..... \$126,193,901

As appears from the above savings and loan associations doing business in the seven cities and counties where plaintiff has its banking offices, held real estate loans secured by mortgages and land contracts as of December 31, 1952 (except where indicated) of \$126,193,901, compared with plaintiff's total mortgages as set forth in paragraph 12 above, of \$62,075,029.

15. In all cases plaintiff during the year 1952, recorded its real estate mortgages with the register of deeds for the county in which the real estate securing the mortgage was located. In all cases the consideration stated in said recorded mortgage represented the amount loaned on the security or committed to be loaned. It is believed that all of the savings and loan associations listed in paragraph 9 hereof did likewise during the year 1952. The following appears from the records of the register of deeds for the year 1952 for each county in which plaintiff had its banking offices, all as shown on the abstract of mortgages heretofore served on defendants with plaintiff's notice of intention to use such abstract as evidence at the trial of this cause:

# REAL ESTATE MORTGAGE RECORDINGS BY COUNTY IN 1952

County	Mortgagee	No. of Mortgages	Amount
Calhoun (Battle Creek, Marshall)	Michigan National Bank...	599	\$ 3,563,215.49
	All other banks and Trust companies .....	338	2,070,799.20
	Building and/or savings and loan associations .....	1,355	5,655,375.13
	Insurance companies .....	101	1,120,500.00
	Credit unions .....	1	15,192.00
	Other corporations .....	258	2,114,011.50
	Individuals .....	364	2,107,198.37
	Total—Calhoun .....	3,016	\$16,646,291.69
Genesee (Flint)	Michigan National Bank...	505	\$ 3,591,185.63
	All other banks and trust companies .....	3,932	21,590,057.63
	Building and/or savings and loan associations .....	678	4,154,887.27
	Insurance companies .....	203	1,485,155.00
	Credit unions .....	15	60,548.84
	Other corporations .....	475	3,310,767.20
	Individuals .....	417	1,694,885.84
	Total—Genesee .....	6,225	\$35,887,487.41
Ingham (Lansing)	Michigan National Bank...	351	\$ 4,320,815.00
	All other banks and trust companies .....	1,051	5,675,811.24
	Building and/or savings and loan associations .....	859	5,256,121.12
	Insurance companies .....	311	4,144,296.62
	Credit unions .....	72	281,808.05
	Other corporations .....	342	3,366,271.66
	Individuals .....	508	2,471,404.40
	Total—Ingham .....	3,494	\$25,516,528.06

## Affidavit of Merits

County	Mortgagee	No. of Mortgages	Amount
Kent (Grand Rapids)	Michigan National Bank...	589	\$ 5,409,112.17
	All other banks and trust companies .....	1,866	12,636,990.36
	Building and/or savings and loan associations .....	1,474	9,383,370.12
	Insurance companies .....	521	6,256,625.00
	Credit unions .....	64	267,722.03
	Other corporations .....	512	4,313,320.74
	Individuals .....	848	3,591,160.58
	Total--Kent .....	5,874	\$41,858,301.90
Saginaw (Saginaw)	Michigan National Bank...	387	\$ 3,046,417.09
	All other banks and trust companies .....	889	4,699,096.25
	Building and/or savings and loan associations .....	1,512	8,087,550.42
	Insurance companies .....	121	1,133,978.92
	Credit unions .....	5	18,065.00
	Other corporations .....	69	662,494.85
	Individuals .....	313	1,505,955.36
	Total--Saginaw .....	3,296	\$19,153,557.89
St. Clair (Port Huron)	Michigan National Bank...	503	\$ 3,159,161.95
	All other banks and trust companies .....	789	3,912,714.78
	Building and/or savings and loan associations .....	620	3,038,242.21
	Insurance companies .....	30	197,800.00
	Credit unions .....	15	61,931.32
	Other corporations .....	10	56,708.00
	Individuals .....	254	1,078,321.79
	Total--St. Clair .....	2,221	\$11,504,880.05



**RECAPITULATION OF REAL ESTATE MORTGAGES RECORDED  
IN CALHOUN, GENESEE, INGHAM, KENT, SAGINAW  
AND ST. CLAIR COUNTIES DURING 1952**

<b>Mortgagee</b>	<b>No. of Mortgages</b>	<b>Amount</b>
Michigan National Bank.....	2,934	\$ 23,089,907.33
All other banks and trust companies.....	8,865	50,585,469.43
Building and/or savings and loan associa- tions .....	6,498	35,575,546.27
Insurance companies .....	1,287	14,338,355.54
Credit unions .....	172	705,267.24
Other corporations .....	1,666	13,823,573.95
Individuals .....	2,704	12,448,926.34
<b>Total—All Counties .....</b>	<b>24,126</b>	<b>\$150,567,046.10</b>

16. Since 1935 to and in 1952 and to date national and state banks in general, and plaintiff national bank in particular, have with increasing vigor sought and made loans secured by mortgages upon residential property, with the view of obtaining and building up a large portion of their respective banking business operations—and in such phase of plaintiff's operation, which is substantial, the associations listed in paragraph 9 hereof, since prior to 1952, in 1952 and to date, employed their capital in sharp and keen competition with plaintiff for such mortgage business in the areas in which said associations and plaintiff operate. Substantially all of said mortgage loans by plaintiff and said associations were made on the security of such real estate and were not taken to secure pre-existing liabilities or as additional security for personal loans. Plaintiff was authorized by law and its charter and by-laws to make such loans. As at December 31, 1952, said associations listed in paragraph 9 hereof had made loans secured by mortgages on residential property, with unpaid balances as of such date, in a principal amount in excess of \$125,-

000,000 as compared with unpaid balances on such date on comparable mortgage loans of plaintiff, of approximately \$50,000,000, or more than 12% greater than such mortgage loans obtained by plaintiff.

17. Since 1913, to and in 1952, and to date, national banks in general, and plaintiff in particular, have solicited savings and time deposits, at interest, to encourage thrift by their depositors and to develop an important and profitable phase of their respective businesses. In the development of such business, plaintiff has been obliged to increase interest rates to a level which would attract such deposits in competition with savings and/or building and loan associations paying equal or increasingly greater dividends to shareholders who invest in shares of such savings and/or building and loan associations, including those listed in paragraph 9 hereof. Discrimination in tax rates on plaintiff's bank shares in favor of state taxes upon the shares or moneyed capital of said savings and/or building and loan associations, in competition with them, has tended to increase their profits because of such competitive advantage in their operations comparable to the plaintiff's mortgage operations, with the result that said associations have been enabled to increase their dividend rate and thus to attract and to increase the savings investments in said associations, thereby making available greater capital to said associations and used by them in making loans secured by mortgages in competition with the substantial and important mortgage loan business of plaintiff bank.

As at December 31, 1952, said associations listed in paragraph 9 hereof, had outstanding in savings shares, excluding surplus, undivided profits, and reserves (as appears from Exhibits 5a through 5p), in excess of

\$130,000,000 as compared with time or savings deposits of plaintiff bank of \$117,889,167 (as appears from Exhibit 3).

18. Since the inception of savings and/or building and loan associations in Michigan in 1887, the nature and character of the operations of savings and/or building and loan associations, including those listed in paragraph 9 thereof, has materially and substantially changed.

A. Such associations originally and up to 1935 were comparatively small in size and in scope of operation. Thereafter, their growth and increased scope and volume of business have made them powerful financial institutions with total assets in the United States as at December 31, 1957 in excess of \$48,000,000,000 as compared with total assets of all banks in the United States of \$203,600,000,000. In Michigan, the striking growth in such associations has taken place substantially since 1943. As of 1943, the total assets of 71 associations in Michigan (both state and federal) was \$145,784,930, whereas by June 30, 1955, their assets had increased to \$865,675,818, and by December 31, 1956, such assets had increased to \$1,057,000,000.

B. The capital of the savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs (listed in paragraphs 9 and 10 hereof) and others operating in the State of Michigan, prior to 1952, in 1952 and thereafter, was and is from investors of all economic and income levels and classes. Their investments are evidenced by "share accounts" or "certificates" and such investors become and are the owners of shares of stock in such corporations (*Michigan Saving & Loan Association v. Finance Commission*, 347 Mich. 311). They are not creditors of said asso-

ciations, but are shareholders who assume the risk of gain or loss in operations. They receive no interest, but only dividends on shares as earned and declared. No fixed rate of dividend is guaranteed or assured. Shareholders have the right to vote for the election of Association Management.

Said associations, during said period, by advertisements (newspaper, radio, television and direct mail) appealed to and obtained as shareholders savings investors of all economic and income classes and levels. These investors were not limited only to small investors or poor people (as obtained in respect to such type associations as they in general were originally and for years operated), and are predominantly from the middle and higher income classes. There was then, but in recent years prior to 1952 and thereafter there was and is now, no limit or ceiling upon the amount any investor might invest in shares of said associations, with minor exception. Shares in said associations during said period and at present are purchased and owned by fiduciaries and trustees of estates of all sizes, by private businesses, by insurance companies and other financial institutions, in addition to persons of all economic and income classes.

Thus, the class and type of investors in said associations has materially changed from those who originally invested in savings and/or building and loan associations as originally organized and particularly for the period from 1933 to date. Such investors were and are basically of the same, if not higher, economic classes and levels, as persons who during said period deposited their savings in savings accounts with plaintiff and intervening plaintiffs and other banks.

During said period most investors in shares in said associations were purely investors and only a small number in numbers and amounts borrowed money from said associations for residential mortgages or otherwise. Anyone wishing to do so could and did then and still can invest in shares of said associations.

C. Virtually all of the capital obtained by said associations from investors in shares during said period, and particularly in 1952 and thereafter, was used by said associations to loan to borrowers, secured by mortgages. Most of the loans were secured by mortgages on residences having values not to exceed \$40,000. Some of said associations loaned moneys, secured by mortgages on commercial properties, and in some instances such mortgage loans exceeded \$250,000.

Said mortgage loans made by said associations, listed in paragraph 9 hereof, in 1952 were basically of the type and character as those made by plaintiff bank in 1952; FHA, Veterans and Conventional. Said loans were of the same average amounts and were secured by mortgage upon the same type and class of residences and other property which were in the same general area as those which secured loans of plaintiff bank.

The borrowers from said associations, listed in paragraph 9 hereof, in 1952 were from all economic and income levels, and were not of a lower (if anything, they were of higher) economic and income level than mortgage borrowers from plaintiff bank.

Said associations, listed in paragraph 9 hereof, in 1952 solicited and advertised for mortgage loans (by newspaper, radio, television, direct advertising and personal solicitation) from all classes of home owners and from prospective borrowers of all economic and income

levels. Few borrowers were shareowners or members before they applied for or were solicited for loans. No borrower from such associations was required to be an investor in shares in said associations and only became a member upon being granted a loan, which membership cost the borrower nothing and is a mere formality without substance.

Borrowers from such associations (listed in paragraph 9 hereof) applied for mortgage loans upon essentially the same forms of loan applications as employed by plaintiff bank, and such applications were processed in essentially the same manner. Likewise, the loans were granted or denied by such associations, as they were by plaintiff bank, dependent upon the financial worth and credit of the applicant and the appraised value of the property to be mortgaged as security.

I. Said associations, competing with plaintiff, have offices in cities where plaintiff operates in its offices, in modern, spacious buildings similar in appearance to that of banks, both inside and outside, suggesting financial stability and comparable operations to those of banks.

E. Unlike the old type of savings and/or building and loan associations, where savings investors from the lower income levels were permitted to make only limited periodic savings investments, and borrowers were investors in the shares, the present modern associations, described above, have no such requirements—investors in shares may be solely investors, without limitation, and not borrowers, and borrowers need not be investors in shares of such associations and may borrow like amounts secured by mortgages as they can from plaintiff bank.

Investors invest in shares of such associations primarily for the return they can get by investing in a



corporation whose operations are primarily in the residential mortgage business. There is actually no mutuality between borrowers and investors and both are from all economic and income class groups.

The investors in said associations are no more encouraged to thrift and savings by investing in said associations than are depositors who make savings or time deposits with plaintiff bank. Nor is the building of small homes by poor people—or for that matter, from any economic and income class level—more encouraged or furthered by loans from such associations than from mortgage loans made by plaintiff bank, with whom said associations are sharply in competition for the residential mortgage business in their respective trading areas.

F. On December 31, 1946, total assets of savings and/or building and loan associations in the United States were slightly in excess of \$10,000,000,000. By year end 1956 such assets approximately \$43,000,000,000. Exhibit 13a is a table showing the number of such associations and their total assets for the period from 1900 to 1956, inclusive. This table is from a report from the Federal Home Loan Bank Board.

G. As at December 31, 1956, savings and/or building and loan associations in the United States had mortgage loans in excess of \$36,500,000,000, representing more than one-third of all recorded home mortgages in the United States.

In 1956 the total amount of mortgage loans made by savings and/or building and loan associations in the United States exceeded \$10,000,000,000 for the second successive year.



H. As at year end 1956 investors in savings and/or building and loan shares had invested in excess of \$37,000,000,000 and such investments were held by approximately twenty million persons. As at that time there were approximately 6,100 savings and/or building and loan associations in the United States.

19. A. Exhibit 6 attached hereto is a consolidated statement as at December 31, 1952, of assets and liabilities of all sixty-three state and federal savings and/or building and loan associations which operated in Michigan in 1952, showing a total amount of assets of \$534,314,000, first mortgage loans of \$420,871,000 and savings capital shares of \$465,468,000. Said exhibit is a copy from the published report of the combined financial statements of the Home Loan Bank Board for the year 1952: Exhibit 6a is a table showing home mortgage recordings by states for the year 1956 and comparing the dollar amount of such mortgages recorded by savings and/or building and loan associations and commercial banks in Michigan. This table is from a report of the Federal Home Loan Bank Board.

B. Exhibit 7 attached hereto is a tabulation of savings of individuals in selected types of media in the United States for each of the years 1920 to 1956, inclusive showing the amount in saving shares of savings and/or building and loan associations in the United States, as compared with savings in commercial banks in the United States, showing an increase in the amount of such saving shares in the year 1933 of \$4,800,000,000 to \$19,200,000,000 in 1952, as compared with savings in commercial banks in 1933 of \$11,000,000,000 as compared with such savings in 1952 of \$39,300,000,000. Said Exhibit 7 is a copy of a report published by the Home Loan Bank Board.

C. Exhibit 8 is a tabulation of non-farm home owners in each of the various income brackets in the United States, which exhibit is a copy of a Federal Reserve Board Report.

D. Exhibit 9 is a table showing the average construction costs of new private one-family houses started in the years 1946-1956 showing that the average cost for the year 1952—as distinguished from the selling price—amounted to \$9,475.00. This exhibit is from the report of the United States Department of Labor.

E. Exhibit 10 is a table showing a mortgage debt on non-farm homes by type of lender in the United States for the years 1940 to 1956, inclusive, showing the dollar amount of mortgage debt owned by savings and/or building and loan associations and those owned by commercial banks, which exhibit is from a report of the Federal Home Loan Bank Board.

F. Exhibit 11 is a table showing the non-farm mortgage recordings by type of lender in the United States for the years 1940 to 1956, inclusive, comparing, among other things, the total amount of mortgages recorded by savings and/or building and loan associations as compared with that of commercial banks. This exhibit is from the report of Federal Home Loan Bank Board.

G. Exhibit 12 is a table showing the proportion of home mortgage by type of lenders in the United States for the years 1940 to 1956, inclusive, showing the percentage of such mortgages based upon dollar volume owned by savings and/or building and loan associations and compared with commercial banks. This exhibit is a copy of a report from the Federal Home Loan Bank Board.

H. Exhibit 13 is a table of V. A. guaranty home loans originated by type of lender in the United States for the years 1948 to 1956, inclusive, and of F. H. A. insured home mortgage loans originated by type of lender in the United States for the years 1948 to 1956, inclusive, showing the amounts originated by savings and/or building and loan associations as compared with that of commercial banks. The exhibits relating to the V. A. loans is based upon a report of the Veterans' Administration of the United States and the portion of the exhibit relating to F. H. A. insured home mortgage loans is based upon a report of the Federal Housing Administration.

I. Exhibit 14 is a table showing the total liabilities of all savings and/or building and loan associations in the United States for the years 1929 to 1956, inclusive, and in particular showing the amount of saving share accounts dollarwise and reserves and undivided profits. Among other things, the report shows the growth in such saving share accounts from \$4,310,000,000 in 1935 to \$19,195,000,000 in 1952 to \$37,300,000,000 in 1956. This table is from a report of the Federal Home Loan Bank Board.

J. Exhibit 15 is a table showing the purpose and amounts of loans made by savings and/or building and loan associations in the United States for the years 1936 to 1956, inclusive. The table is from a report of the Federal Home Loan Bank Board.

K. Exhibit 16 is a consolidated statement (abstracted from the Report of the Secretary of State of Michigan) showing the assets and liabilities of all state savings and/or building and loan associations in Michigan as at June 30, 1952 and June 30, 1953.

L. All abstracts, synopses and copies of public records heretofore served upon defendants and referred to in plaintiff's Notice of Intention heretofore filed herein are hereby offered as evidence, and the contents thereof are hereby incorporated herein by reference.

•M. Exhibit 17 shows the total of mortgage shares, and total assets of the savings and/or building and loan associations in the United States for the period from 1941 through January 1958.

Exhibit 18 shows the mortgage activities of such associations for the period from 1941 through 1958 by types of mortgages.

Exhibit 19 shows the total of mortgage loans and types of mortgages held by banks in the United States for the period from 1941 through 1957.

Exhibit 20 shows the total assets and liabilities, including time deposits of all banks in the United States for the period from 1939 through February, 1958.

Exhibits 17 through 20 are from the Federal Reserve Board Report and Bulletin of April, 1958.

20. That on the facts as set forth in the pleadings together with the exhibits attached thereto, on admission of defendants heretofore made, on the facts set forth in the Affidavit of Merits and the exhibits hereto, and the depositions heretofore taken (with the accompanying exhibits) of the following persons: George L. Young, President, Grand Rapids Mutual Federal Savings and Loan Association, Harold O. Swanson, President, Mutual Home Federal Savings and Loan Association, John H. Weatherwax, Secretary and Manager, West Side Federal Savings and Loan Association, and James H. Jerome, Executive Vice President, First Savings and

Loan Association, which are filed herewith, deponent believes that defendants are not entitled to a summary judgment of no cause of action against either plaintiff or intervening plaintiffs and that accordingly their motion for summary judgment should be denied and the cause proceed to trial.

Further deponent sayeth not.

/s/ Russell Fairles.

### OPINION

(Filed January 20, 1959)

Plaintiff, a national bank, seeks to recover the amount of \$49,929.27 paid by it under protest to the state. Such sum represented a deficiency assessed against plaintiff for the 1952 intangible tax pursuant to Act No. 9 of the Public Acts of Michigan for 1953 which amended the Intangible Tax Act (Act 301, Public Acts of 1939; M. S. A. 7.556(2a)) with respect to the taxation upon shares of the stock of national and state banks and trust companies.

It is settled law that:

“ ‘National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent’. *First National Bank of Anderson*, (269 U. S. 341). *Des Moines Bank v. Fairweather*, 263 U. S. 106.” *First National Bank v. Hartford*, 273 U. S. 548, 550.

See also:

*People v. Weaver*, 100 U. S. 539;

*Talbot v. Silverpaul County*, 139 U. S. 138;

*First National Bank v. Adams*, 258 U. S. 362.

Congress, by appropriate action, has permitted the taxation of shares in national banks subject to certain restrictions. This consent and the restrictions are now found in R. S. Section 5219, which reads in part:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business,



shall not be deemed moneyed capital within the meaning of this section." U. S. Code, Title 12, Section 548.

Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank shares are taxed at a greater rate than other moneyed capital in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon "the privilege of ownership" of shares in national banks, that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted.

Certain other national banks have intervened in the cause asserting that they similarly paid under protest the taxes levied under the amended Intangible Tax Act and seek to recover the amounts so paid. For the purpose of expediting the determination of the legal questions, the intervener action by order of the Court was separated from the trial of the plaintiff's case. The proofs introduced related solely to plaintiff's case and the decision to be made upon this record will adjudicate only that case.

Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit union, finance companies, and monies in the hands of individuals and partnerships.

Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned and its counsel stated that



it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

The institutions referred to are usually known as "building and loan associations" when organized under state laws, and as "savings and loan associations" when organized under the federal statute. The Michigan Statute is Act No. 50 of the Public Acts of 1887 as amended (M.S.A. 23.541 et seq.) and the Act of Congress is the Home Owners Loan Act of 1933 (U.S.C.A. Section 1464 et seq.)

Plaintiff has its principal banking office in the City of Lansing. It carries on the banking business in that city and in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw.

In these cities there are sixteen building/savings and loan associations.

Without attempting to state in detail the proofs (the record consists of some 1750 pages of transcript, numerous depositions and some hundreds of exhibits), it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank v. Hartford*, 273 U.S. 548:

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of § 5219, even though the competition be with some but not all phases of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those

who compete but from the manner of the employment of the capital at their command. \* \* \* To so restrict the meaning and application of §5219 would defeat its purpose. It was intended to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation in favor of capital invested by institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks. *Mercantile Bank v. New York*, supra, 155. With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul*, today decided (273 U.S. 561) p. 561, discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." (557-558).

"We do not conceive that in order to establish the fact of competition it is necessary to show that national banks and competing investors solicit the same customers for the same loans or investments. It is enough as stated if both engage in seeking and securing the same locality capital investments of the class now under consideration which are substantial in amount." (559).

In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, ~~state-wide and of the plaintiff national bank.~~ Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

With reference to competition, in fact, defendants contend that the savings and loan association operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization

and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952 represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and that in 1952 it loaned only its deposit money on security of real estate.

And defendant summarizes its position on this factual issue as follows: "in the last analysis, savings and loan associations cannot be in 'substantial competition with the business of national banks' because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

Defendants further present certain serious contentions of law which if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly

summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground of public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

The banks of Michigan are not unanimous in this litigation.

The Michigan Bankers Association has been permitted to file a brief as *amicus curiae* in which it states the position of its members in these words:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed."

And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants.

Counsel for Michigan Savings and Loan League was likewise given permission to file a brief as amicus. He has not filed a formal brief, but he has by letter contributed to the discussion of the legal issues in this case, particularly with reference to the effect of the 1933 Act of Congress providing for the creating of Federal Savings and Loan Associations.

At the outset, the Court expresses its appreciation of the manner in which this case has been presented. Experienced and able counsel have diligently prepared their cases for trial and the proofs were introduced in an intelligent and effective manner. The briefs of counsel for the parties and for amici have forcefully and persuasively presented their respective views and contentions. What might have been drudgery, has, in fact, been an exceedingly interesting experience in which nearly a century of history of the financial life of the nation, of its legislation and its judicial decisions have been vividly portrayed. The decision of this Court will undoubtedly be appealed and it is believed that the record here made will be adequate to enable the Appellate Court or Courts to arrive at an answer to this question of importance to the states, the national banks and the savings/building and loan associations.

There can be found in the language of the numerous decisions since the passage of the legislation which is now Section 5219 support for the position of each party. To arrive at a correct conclusion as to the meaning of this section, it is necessary, I believe, to gather the intention of Congress in adopting the statute, in revising it in 1923 and 1926, in broadening the powers of national banks to make loans upon the security of real property, in adopting the 1933 legislation providing for Federal Savings and Loan Associations, and in adopting certain other legislation to which reference will be made. And



in arriving at the intention of Congress, it is, of course, necessary to review the construction put upon the statute by the United States Supreme Court and by other courts to which the question has been presented.

I shall state my conclusions as briefly as the complexity of the question and a review of the legislative and judicial history of nearly one hundred years will permit.

Between the time in which Andrew Jackson served as President of the United States and the year 1863, the United States was without a national banking system. The conditions which existed in that year and which resulted in action by Congress were described upon the trial by Professor Woodworth, Professor of Finance at the School of Business Administration, in the University of Michigan, whose major field of specialization is money and banking. Mr. Woodworth said:

"I should say, sir, that the primary emphasis on monetary reform by the founders of the National Banking System grew out of the chaotic state of the currency during the period following the failure to renew the charter of the Second Bank of the United States in 1836 and extending to the establishment of the National System.

"Between one thousand and sixteen hundred state chartered banks issued notes of different designs and sizes, and worst of all these notes varied in value from worthless to part.

"Senator Sherman stated before the Senate that there were over seven thousand genuine kinds of notes in 1862 and some six thousand six hundred kinds of counterfeits. Mr. Sherman made that statement in a speech before the Senate February 10,



1863, quoted in the Congressional Globe, Part 1, 1862 to '63, page 84.

“Moreover, the notes of sound banks were discounted more and more heavily as they strayed farther from the point of redemption. Merchants had to subscribe to currently published bank note dictators listing values of notes and giving assistance in spotting counterfeits. Bank failures with their crippling losses to note holders and depositors were so numerous and widespread that public confidence in banks all but disappeared.

“For examples, there were 28 banks in Michigan in 1839, but by 1843 there were only 2, and in 1848 and 1849 there was only one bank; the number of banks in Ohio dropped from 37 in 1840 to 8 in 1844 and 1845; the 19 banks in Kentucky in 1851 were reduced to 4 in 1853; the number in Tennessee declined from 26 in 1838 to 1 in 1851-1857. These references are quoted from the Annual Report of the Secretary of the Treasury, 1876, pages 222 to 228.

“The lack of safety of banks was not only a drain on business and consumers, but was also a serious obstacle to Federal Government finance. Since the Treasury could not safely keep deposits in the banks, the Acts of 1840 and 1846 established an Independent Treasury System with subtreasuries in leading cities. Under these acts the Treasury could receive taxes and other receipts only in specie and Treasury notes, and public funds had to be kept in its own treasuries.

“This arrangement caused periodic disturbance in the money and capital markets, owing to the periodic withdrawals and outpayments of specie re-

serves. In addition, the Treasury could not rely on the banks to assist in its debt management operations—that is, borrowing, redeeming securities, refunding securities, and so on.

“The founders of the national banking system contemplated that national bank notes would become the only currency, aside from coins, as soon as the emergency issue of United States notes, popularly called the greenbacks, could be retired in the years following the Civil War.”

The proceedings of Congress having to do with the adoption of the provision which was to become Section 5219 are described in “State Taxation of Banks—Woosley” as follows:

“The statutory genesis of the state taxation of national banks is to be found in the National Bank Act of 1864. The original act of 1863 contained no provision authorizing the state taxation of national banks, but the debates on the revised measure were enlivened with this issue. Should the banks be subject only to federal taxation or to both federal and state taxation? If the latter, on what constitutional grounds might such taxation rest and by what methods and to what degrees should these banks be taxed by the states?

“In both houses of Congress there was a vigorous group which favored the exclusive taxation of national banks by the federal government, but in both bodies the advocates of joint state and federal taxation were victorious. After a number of proposals for state taxation were made in the House, that body passed a tax clause which permitted the states to tax the capital stock, other than that invested in federal bonds, to the same degree that the property

of other moneyed corporations was taxed, with the further proviso that the capital, circulation, dividends or business of national banks might be taxed at no higher rate than that imposed by the state on moneyed capital in the hands of individuals.

“When the measure reached the Senate, the constitutional phases of the question were elaborately discussed. Senator Sumner of Massachusetts urged that the supremacy of the federal government was of such a character as to free these banks as agencies of that government from the potentially destructive taxes of states, citing the dictum of Chief Justice Marshall in *McCulloch v. Maryland*. The advocates of state taxation, while admitting that the court had held that the United States Bank and its operations were not subject to state taxation, contended that such immunity did not apply to the shares. Mr. Fessenden of Maine urged that:

‘ . . . this opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State.’

“Senator Collamer drew a distinction between the institution and its shares which were the personal property of the shareholders and taxable as such at the situs of the shareholder. Senator Johnson of Maryland, who had heard the case argued before the court, interpreted the decision as declaring that the power of the State of Maryland to tax the shares of the United States Bank was an ori-

ginal power resident in the sovereignty of the state; that while a tax on the franchise or operations of the bank was held invalid by the court,

“... no judge though, and no member of the bar who argued the cause dreamed of denying that it would be in the power of the States to tax the property of their citizens invested in the stock of the Bank of the United States . . . and the Supreme Court closed their opinion, so as to exclude any conclusion which could be drawn as against the taxing power of the States on that point by saying that it is to be understood that Maryland has the right, and every State in which there may be a bank of the United States, either the mother bank or a branch, has the right to tax the real estate which the bank may hold within that State, and to tax the shares of her citizens in that institution.”

“Therefore Senator Johnson concluded that the federal government lacked the power to exempt from state taxation the shares of bank stock invested in government bonds.

“In the end this view prevailed and the state tax clause of the Senate bill provided for the taxation of the market value of bank shares subject to the restrictions that the rate imposed should not be higher than the rate on other moneyed capital in the hands of individual citizens nor higher than the rate on state bank shares. In the conference committee the Senate provision was adopted with slight changes and the measure became law on June 3, 1864.”

The Act, as adopted, restricted the rate imposed by states upon the shares of national banks to that (1) imposed on other moneyed capital, and (2) imposed on state banks.

In 1868 the second limitation to the rate on state banks was dropped from the Act so that the Act then read, so far as the limitation was concerned:

“Provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority \* \* \* but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.” (Woosley, 14).

This amendment was related primarily to the situs of taxation of bank shares and the elimination of the limitation to the rate imposed on state banks, was apparently without any particular significance.

There was no further substantial amendment to the Act until 1923, the only change in that period being that in phraseology incident to the general revision of the Federal Statutes in 1878.

Before 1923, at which time substantial amendments were made, many cases involving the meaning of Section 5219 were presented to the United States Supreme Court. If this opinion is to be limited to a reasonable length, reference to only a few of the cases can be made. The decision that has been most cited is *Mercantile National Bank v. City of New York*, 121 U.S. 138 (1887) and in the most recent decisions that case continues to be recognized as the leading case upon the interpretation of Section 5219.

In the opinion which was written about twenty years after the passage of the Act, the Court defines the object of the National Bank Act and the purpose of the section

fixing limitation on state taxation and deals at length with the question presented in this case—the power of the State to exempt in whole or in part certain moneyed capital without violating Section 5219.

The bill was filed to restrain the collection of taxes levied by the State of New York on the shareholders of a national bank and it was claimed that the State discriminated in its taxation against such shares in favor of insurance companies, trust companies, railroad companies, savings banks and other institutions. The Court first stated the purpose of the Act creating a National Banking System.

“The key to the proper interpretation of the Act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people and to facilitate the operations of the Treasury of the United States.” (154).

The Court then considered the purpose of the limitation on the power of the State to tax:

“It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capi-



tal in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

"At this time, the Statute did not contain the language "coming into competition with the business of national banks" which was added in 1923. However, the Court in the *Mercantile* case, defined the term then used "moneyed capital in the hands of individual citizens" to mean only such moneyed capital as was in competition with the business of national banks, concluding its discussion on this point with these words:

"Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States.



The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress."

As stated, the Mercantile Bank case has been cited with approval and followed by the United States Supreme Court in a large number of cases including the most recent on the subject. Thus, in *First National Bank v. Anderson*, 269 U. S. 341 (1926), the Court said:

"\* \* \* The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here—

"1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. Mer-

*mercantile National Bank v. New York*, 121 U.S. 138, 155; *Des Moines National Bank v. Fairweather*, *supra*, 116.

"2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile National Bank v. New York*, *supra*, 157; *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 461."

The Court in the *Mercantile* case further passed upon the question of the power of the State to exempt certain property—moneyed capital invested in savings banks—upon the ground of public policy and without violating Section 5219. And it is upon this part of the opinion and upon later cases involving savings banks that defendants rely in support of their contention that states may, without violating Section 5219, exempt or prefer moneyed capital invested in building and loan associations.

Because it is defendants' claim that building and loan associations are not different in their purpose, object or practical effect from mutual savings banks, it is appropriate at this point to briefly describe these latter institutions which were before the Court in the *Mercantile* and other cases to be cited. Professor Woodworth describes them in his testimony and they are to some extent pictured in the opinions in the Supreme Court to which reference will be made.

Mutual Savings Banks first appeared in this country in 1816. They had no capital stock, their funds came from savings deposits, they were operated by a board of

trustees chosen in various manners, their "capital" consisted of their surplus and reserves above liability to depositors. In general, their funds were invested in financing home ownership. All earnings except those retained for surplus reserve went back to the depositors.

The Mercantile Bank case was not the first case in which the power of the State to exempt property on the ground of public policy was considered. In *People v. Commissioners*, 4 Wall, 244 (1866), the Court said:

"It is known as sound policy that in every well regulated and enlightened state or government certain descriptions of property and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation even where the fundamental law had ordered that it should be uniform."

In *Adams v. Nashville*, 95 U.S. 19 (1877), a suit by stockholders of a national bank to enjoin collection of a tax, the Court said:

"The act of Congress . . . was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so."

In *Hepburn v. School Directors*, 234 Wall. 480, (1874), the Court said:

"It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt. Certainly, there was no presumption in favor of such an intention."

In the Mercantile Bank case, decided in 1887, the Court sustained, as not violating Section 5219, an exemption of savings banks. In doing so, the Court said:

“In the case of savings banks, we assume that neither the bank itself nor the individual depositor is taxed on account of the deposits. The language of the statute (§4, c.456, Laws of 1857) is as follows: ‘Deposits in any banks for savings, which are due to the depositors, . . . shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of this State.’

“According to the stipulation in this case, the deposits in such banks amount of \$437,107,501, with an accumulated surplus of \$68,669,001. It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the state. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that ‘it could not have been the intention of Congress to exempt bank

shares from taxation because some moneyed capital was exempt;’ *Hepburn v. School Directors*, 23 Wall. 480; and that ‘the act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so.’ *Adams v. Nashville*, 95 U.S. 19. The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares.”

It is to be noted that the Court gives two reasons for its holding. First, stating that savings banks do not come into competition with national banks and, secondly, stating that the statute was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so and if the exemption be founded on just reason and not operate as an unfriendly discrimination against investments in national bank shares.

The Court was to make clear which of these two reasons it considered the controlling one in later cases which came before it. A few months after the decision in the *Mercantile Bank* case, *Davenport Bank v. Davenport*, 123 U.S. 83 (1887) was decided. The decision in the case may be distinguished upon the ground that there was in fact no actual discrimination against national banks. The opinion of the Court is of importance because the Court which had decided the *Mercantile Bank* case, took occasion to state the reason for its decision in that case; the Court said:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 U.S. 138. In that opinion it was held that, while the deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted. The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the State; and, as was said in *Hepburn v. School Directors*, 23 Wall. 480, it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

Less than a year later, the *Bank of Redemption v. Boston*, 125 U.S. 60 (1888) was decided and the opinion was written by Mr. Justice Matthews who had written the opinion in the *Mercantile Bank* case. Plaintiff bank alleged that the State of Massachusetts collected from national banks a tax of \$1,564,995.00 upon bank shares of 113 million dollars, while upon 163 million dollars of savings bank deposits it collected only \$815,930.00.

Plaintiff sought to distinguish the *Mercantile* case by the allegation that in Massachusetts, savings banks were permitted to transact a banking business in the way of loans upon personal securities "which assimilates them more closely to national banks and takes away the reason for the application of the rule to them which was applied to the case of the savings banks of New York."



The Court held that section 5219 was not violated, saying: "The question of exemption from taxation of deposits in savings banks as affecting the rule for state taxation of national bank shares was very diligently considered by this Court in the case of *Mercantile Bank v. New York*, 121 U.S. 138, 160; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83."

Answering the contention as to actual competition and the difference between the facts in New York and Massachusetts, the Court said:

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided, which forecloses further discussion as to the present point in this case."

I have not been cited, nor have I been able to find any subsequent decision of the United States Supreme Court which squarely involved discrimination in favor of savings banks. In two later decisions, however, the Court did recognize the validity of the rule of exemption stated in the cases which have been cited.

In *Aberdeen Bank v. Chehalis County*, 166 U.S. 440 (1896), the Court, referring to the *Mercantile Bank* case, said:



"As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property, and the conclusion of the court, in respect to savings banks, was thus expressed." (Quoting from the *Mercantile Bank case*).

And in *National Bank v. Chapman*, 173 U.S. 305 (1898), the Court, after referring to the *Mercantile Bank* and other cases, said:

"... and that exemptions from taxation, however large, such as deposits in savings banks or monies belonging to charitable institutions which are exempted for reason of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal Statute (214)."

It is the claim of the defendants that building and loan associations are in the same class of institutions as savings banks. They are described at length in the testimony of Professor Woodworth. Because they will be described in the statutes and decisions to which reference will be made, I shall not summarize his testimony except to state his conclusions:

"Q. Now, referring to 1952, were savings and loan associations similar to national banking associations?

"A. I should say they were not.

"Q. Were they similar to any other financial institution?

"A. Yes, I should say savings and loan associations were quite similar to mutual savings banks."

The power of the State to exempt or favor moneyed capital invested in the shares of building and loan associations had not been decided by the United States Supreme Court prior to the 1923 amendments to the statutes. It had, however, met judicial consideration in *Mercantile Bank of Cleveland v. Hubbard*, 98 Fed. 465 (1899). The opinion was written by Circuit Judge Taft who said; after citing *Bank v. Chapman*, 173 U. S. 205;

"I do not find that there was anything more of substance before the master than there was before the supreme court upon this issue of fact. There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, under the decision of *Mercantile Bank v. City of New York*, 121 U. S. 138, 7 Sup. Ct. 836, 30 L. Ed. 895, capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks,

any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the savings from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law. The general result of the evidence is no more satisfactory as showing what amount of discrimination, if any, there is by reason of this definition of 'credits' in the Ohio statute of taxation, than it was in the case of *Bank v. Chapman*. For this reason I must conclude, as the master did, that the averments of the bill as to the discrimination, arising from the operation of this definition of 'credits,' against money capital, is not such as to justify any action by the court in the complainant's favor."

This decision was before the Circuit Court of Appeals, 195 Fed. 809, and the United States Supreme Court in 186 U. S. 458 (under the case of *Lander v. New York Bank*), but in neither appellate court was the question of exemption of building an loan shares presented or decided.

This was the state of the case law with respect to the power of the state to exempt such associations as mutual savings banks and building and loan associations upon the ground of public policy when Congress amended section 5219 in 1923. I cannot escape the conclusion that at that time, it was established law that the state had the power to exempt on the grounds of public policy institutions of the general character of mutual savings

banks without violating section 5219. The Court had so announced the law in the five cases which have been discussed. In no case had it overruled or disapproved the principles of those cases. And Judge Taft in the Hubbard case had applied the rule to building and loan associations and while this is not conclusive, counsel who took the case to the Court of Appeals and to the Supreme Court does not have appeared to have challenged his ruling as to building and loan associations in either of those courts.

In arriving at the intention of Congress in its adoption of the 1923 amendment to section 5219, attention must be given to the events which preceded and apparently provided the reason for such legislation.

In 1921 the Supreme Court decided *Merchants National Bank v. Richmond*, 256 U. S. 635, and held that the words "moneyed capital" included "not only monies invested in private banking, so-called, but investments of individuals in securities that represent money, the interest, and other evidences of indebtedness that normally enter into the business of banking."

The facts were that the State and city had taxed bank shares at \$1.75 per hundred dollars while bonds, notes and other evidence of indebtedness in the hands of individuals were taxed at the combined rate of ninety-five cents per hundred dollars. The Court held that section 5219 was violated.

The case did not involve building and loan shares or savings banks. The court in its opinion quoted with approval the Mercantile definition of moneyed capital, but did not discuss exemptions of such institutions on the ground of public policy.

The decision is said by Woosley (Page 53) to have imperiled share taxes in eight classified property tax states and in twelve other states which exempted moneyed capital from the property tax and substituted therefor an income tax. Large numbers of suits were commenced by national banks and in some states the banks refused to pay taxes assessed against them.

Alarmed state officials inaugurated a movement to amend section 5219 and a bill was prepared and introduced in the House to permit states to tax shares of national banks or the income therefrom subject only to the restriction that the burden imposed should not be heavier than that levied upon capital invested in state banks or upon the income therefrom (Woosley, 53, 54). The ensuing proceedings are portrayed by the same author and may be read with interest.

It is sufficient here to say that it does not appear that at any time in any of the several proposals considered in the two Houses of Congress that there was an effort made to legislate against the power of the states to exempt savings banks, building and loan associations or other like institutions on the ground of public policy.

The bill that finally emerged as the law provided for three alternative methods of taxation of interest in national banks:

- (1) a tax upon shares;
- (2) net income tax on the banks;
- (3) tax on net income from dividends to owners of shares.

With respect to the tax upon bank shares, the language of section 5219 was amended to read that the tax shall not be at a greater rate "than is assessed upon

other moneyed capital in the hands of individual citizens of such state *coming into competition with the business of national banks.*" (Emphasis added.)

Woosley, citing the Congressional record, states upon consideration of the amended House Bill which was to eventually pass the House and Senate and become the law, Representative Wingo declared:

"That the bill offered 'a tried simple rule that is well settled by a long line of judicial decisions with such additions to it as will clearly and more equivocably overrule the Richmond decision.'"

While, as will be seen, Mr. Wingo proved a poor prophet as to the future effect of ~~of~~ legislation upon the Richmond decision, his statement is of interest upon the question of whether Congress had any intention of changing the rule of the Mercantile and other savings banks cases upon the power of the State to exempt such property on the ground of public policy.

The effect of the 1923 amendment came before the Supreme Court in *First National Bank v. Anderson*, 269 U. S. 341, decided in 1926. The Court there approved its holding in the Richmond case and said:

"The defendants say that this reenactment was intended as legislative interpretation of the prior restriction and that the proceedings resulting in its adoption so show. But, assuming that this is true, the situation is not changed; for the reenactment did no more than to put into express words that which according to repeated decisions of this Court was implied before."

And the court proceeded to quote from the Mercantile Bank opinion in its definition of moneyed capital.



In 1926 the statute was again amended by adding the fourth alternative method of taxing national banks—that of imposing a franchise or excise tax and by permitting a tax on dividend income to be combined with either corporate or net income or franchise tax. This apparently was the result of an agreement between representatives of the banks and of the states and has no significance here (Woosley, page 63).

If it be accepted that by virtue of the decisions in the savings bank cases it had become established law that the states had power to exempt savings banks and like institutions upon the ground of public policy, it is difficult to find in the history and language of the 1923 and 1926 amendment to section 5219 any evidence on the part of Congress to take from the states that power.

Certainly, the power of the states to grant exemptions on the ground of public policy was an important power. It had been recognized throughout the first fifty years of the life section 5219 and to terminate it would affect the validity of many state taxation systems. I am not persuaded that the intent to do so should be inferred from an amendment which does not mention the power and the passage of which was brought about by certain considerations having nothing to do with the existence of that power.

It is the further contention of the plaintiff that by reason of certain amendments to the Federal Reserve Act the power of national banks to loan money on the security of real property was greatly broadened, that the increased exercise of such power by the banks has resulted in substantial actual competition between national banks and other moneyed capital in the field of loans on residential property and that the Court recognized such competition in its decision in *First National Bank v.*

*Hartford, supra*, and in *Minnesota v. First National Bank*, 273 U. S. 561.

The plaintiff has in its brief reviewed the legislation having to do with national bank loans on the security of real property as follows:

"An historical review of Section 24, Federal Reserve Act (12 U. S. C. 371), as amended (which prescribes the authority of national banks to make loans secured by real estate), reveals that prior to 1916, national banks were not authorized to loan money on the security of real estate, with the exception of certain farm land. By Act of September 7, 1916, the first grant of authority by Congress to loan on residential real estate was made to national banks. This enabled national banks to loan money on the security of improved real estate to the extent of 50% of actual value for a term of no longer than one year. With the exception of the Act of February 25, 1927, which extended the term of said mortgages to no longer than five years, no material change was made in the national banks' authority to loan on the security of residential mortgages until 1934.

"In 1934 (Act of June 27, 1934), national banks were permitted to make mortgage loans under Title II, National Housing Act (12 U. S. C. 1701 et seq.), commonly described as F. H. A. mortgages. By Act of August 23, 1935, amending Sec. 24 of the Federal Reserve Act, national banks were authorized to make residential mortgage loans in the amount of 60% of the appraised value of the property for a term of ten years if 40% of the mortgage principal were amortized within ten years. By Comptroller General's decision of 1944, national

banks became participants in the V. A. (or G.I.) home loan program.

“Accordingly, in 1952, national banks were authorized to make F. H. A. mortgage loans, V. A. mortgage loans, and liberal conventional mortgage loans.”

First National Bank v. Hartford was decided in March, 1927. The Supreme Court in a suit by a national bank to recover the amount of tax assessed and collected upon its shares of stock reversed a judgment for the defendant and held that the Wisconsin statute was invalid as being in violation of section 5219. The Court summarized the evidence as to the alleged competing moneyed capital in the hands of real estate firms which loaned money, and in the hands of individuals, co-partnerships and corporations engaged in the business of acquiring and selling notes, bonds, mortgages and securities. The Court held that there was competition, in fact, with the business of national banks and stated its reasons therefor in the language previously quoted in this opinion. In the decision of the Wisconsin Supreme Court in the same case, (203 N. W. 721, 733-4), the matter of tax preference to building and loan associations was discussed and the Wisconsin Court insofar as such institutions was concerned gave consideration to the savings bank cases and to the Hubbard case, but in the United States Supreme Court opinion, the Court, in its description of the competing capital involved, did not base its decision on any claimed competition between banks and such associations.

The Supreme Court did in the Hartford case cite with approval the Mercantile Bank case on three different occasions, but it did not consider or decide the matter of exemption by the states on the ground of public policy.

of savings banks, building and loan associations or other like institutions.

Nor did the Minnesota case, decided on the same day as the Hartford case, mention building and loan associations and the opinion does not discuss exemptions on the ground of public policy.

If the savings bank cases had been grounded on the lack of actual competition between those institutions and national banks, the argument of counsel that those decisions were no longer applicable because of the broadened powers of national banks would be persuasive, in those cases in which the banks had actually exercised those broadened powers and proof of actual competition within the definition of that term in the Hartford case actually existed.

But if the real basis of the savings banks cases was the power of the states to exempt on the ground of public policy without regard to the existence or actual competition, then I do not find in the legislation broadening the powers of national banks or in the opinion of the Supreme Court in the Hartford and Minnesota cases any evidence of an intention to take from the states the power to grant such exemptions.

And it is a little difficult to believe that the Court in the Hartford case, relying so heavily on the principles of the Mercantile Bank case, intended to overrule that part of that decision relating to the power of the state to exempt on the ground of public policy without once mentioning the subject.

With this background of the history of the legislation and of its judicial interpretation, we now reach the precise question presented in this case—did the State of Michigan in 1952 have the power to exempt or prefer

savings/building and loan associations without violating section 5219?

The 1899 decision of Judge Taft in the Hubbard case has already been discussed. The question was next considered by a Federal Court in 1932 in *Hoenig v. Huntington National Bank*, 59 Fed. 2d 479 (C. C. A.—6 certiorari denied October 17, 1932, 287 U. S. 648).

In this suit three national banks contended that section 5219 had been violated because of the preferential treatment given by the State of Ohio to building and loan associations.

The Court of Appeals reversed the District Court which had held that actual competition in fact existed between the national banks and the savings and loan institution and that section 5219 was violated. 45 Fed. 2nd, 213.

The Court of Appeals in both the majority and minority opinions cited and recognized the principles of the Anderson and Hartford cases. But the majority of the Court held that the case was governed by the principle of the savings banks cases. It quoted from the opinion of Judge Taft in the Hubbard case that building and loan associations were not to be differentiated in their purpose or object or practical effect from savings banks.

The Court then met the argument that is made in the instant case that there is a difference between the building and loan associations of earlier days and those of today. The Court said:

“It is insisted, however, that the present day building association is a very different type of institution from the ‘small, neighborhood, mutual associations of Judge Taft’s time,’ and emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the

payment of deposits on demand, and the making of loans upon collateral security. We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable."

And then the Court considered the claim also made in this case as to the change in powers of national banks and said:

"It is quite true that national banks, subject to certain restrictions, are now permitted to loan money upon the security of real estate mortgages, and that the plaintiffs below had taken advantage of this privilege. It is also true that building associations have invested some of their funds in Liberty bonds, and, to a very limited extent, may have made a few investments of idle capital in collateral loans or so-called 'straight' mortgages. But we cannot concede that even as to these investments the building associations are in substantial competition with national banks, or that, as claimed by plaintiffs below, the mere facts that money is loaned by building associations upon promissory notes, at interest and to be repaid in money, and that national banks take the ownership of real estate into consideration in passing upon the credit standing of borrowers, necessarily bring the two classes of institutions into competition. In the broad economic sense this may be so, but it was equally so when *People of State of New York v. Commissioners, Mercantile Nat. Bank v. New York, First National Bank of Wellington v. Chapman, and Mercantile National Bank v. Hubbard* (*Lander v. Mercantile Nat. Bank*) were decided. In those cases the fundamental and substantial differences between commercial institutions, such as



national banks, and institutions of the insurance company, savings bank, and building association types, were the real bases of the finding of want of competition; and our decision of the present issue is founded upon a recognition of these same differences."

It is the contention of plaintiff that the Hoenig case may be distinguished on the facts as to competition; but if the portion of the opinion last quoted actually reflects the thinking of the Court of Appeals, additional proof of competition would not have affected the result. This matter of discrimination in favor of building and loan associations has also met consideration by the state courts and they have uniformly held on the strength of the savings bank cases that the state has the power to exempt or prefer building and loan associations. In addition to the state court decisions, in those cases which were appealed to the United States Supreme Court, there are the following: *People v. Goldfogel*, 205 N. Y. S. 870; 211 N. Y. S. 85 (1924); *Merchants National Bank v. Dawson County*, 19 Pacific 2d 892 (1933); *Consolidated National Bank v. Prieme County*, 42 Pacific 291 (1897).

It is the contention of the plaintiff that competition with building and loan associations was actually involved in three decisions of the Supreme Court, *First National Bank v. Hartford*, *supra*; *Commercial National Bank v. Custer*, 275 U. S. 502; *First National Bank of Shreveport v. Louisiana State Tax Commission*, 289 U. S. 60.

The Hartford case has already been discussed and as pointed out, while the state court specifically dealt with the effect of competition with building and loan associations, the Supreme Court based its decision on the basis

of competition with real estate firms and individuals and did not mention the building and loan associations and did not discuss much less overrule, the savings bank cases.

Commercial National Bank v. Custer is a like case. The Supreme Court decision is a memorandum opinion only. The opinion of the State Court (245 Pacific 259) discloses that the competition claimed represented money invested in notes in the hands of individuals, in mortgages, in real estate, and investment companies, and in building and loan associations.

The Supreme Court opinion reads:

"Reversed on authority of First National Bank of Hartford v. Hartford, 273 U. S. 548, 559, 560; Minnesota v. National Bank of St. Paul, 273 U. S. 561, 567, 568."

Inasmuch as neither the Hartford case nor the Minnesota case was decided by the Supreme Court on the basis of competition with building and loan associations and in neither case was there any discussion of the savings bank cases or of the power of the State to exempt on the ground of public policy, I cannot find in the memorandum opinion any intention to overrule those cases or to hold the State without that power. "For a discussion of the effect of the Custer case, see *Merchants National Bank v. Dawson County*, 19 Pacific 2d 893, 896 (Montana, 1933).

The third case relied upon by plaintiff is the *First National Bank of Shreveport v. The Louisiana Tax Commission*, 289 U. S. 60 (1933). The Court there affirmed the decision of the Louisiana Supreme Court in 143 Southern 23.

The State Court had held that the State of Louisiana had not violated either the 14th Amendment of section 5219 by its preferential treatment of loan companies, finance and securities companies, pawnbrokers, homestead and building associations, Federal joint stock land banks, life insurance companies, real estate, mortgage and investment companies, and investment brokers. The Louisiana Court said, insofar as building and loan associations were concerned, and quoting from the savings bank cases, that:

“even if the tax system complained of by plaintiffs did operate in favor of homestead and building associations (the Louisiana name for building and loan associations), that would not be a cause for complaint.”

The United States Supreme Court, affirming the decision of the Louisiana Court, said, in answer to the 14th amendment argument:

“If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things, in this: There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits.”

And in disposing of the argument based on section 5219, the Court did not discuss separately the several alleged competitors, but answered the argument of the national bank in the following language:

“The item most strenuously urged upon us is that the plaintiffs were engaged in lending money on mortgages of real estate, a line of business in which

many mortgage companies, insurance companies, building and loan associations, and individuals were also engaged; and that the latter escaped taxation thereon. The record discloses that each of the banks held real estate mortgages in a substantial amount. But the fact that the banks held mortgages does not prove that they lent money on the security of those mortgages. These may have been taken to secure pre-existing liabilities or as additional security for personal loans. The Supreme Court found: "The testimony leaves no doubt that there was no competition with the national banks on the part of any concern lending money on mortgage of real estate, because national banks will never handle such loans." The record contains evidence ample to support that finding."

Plaintiff urges that the statement as to fundamental difference between these alleged competitors related solely to the 14th amendment argument and furnishes no justification for a difference in tax treatment insofar as section 5219 is concerned.

And, because the Court in discussing the effect of section 5219, dealt with all the alleged competitors together, plaintiff draws the inference that if as a matter of fact actual competition had been found, the Court would have held that section had been violated because of the preferred treatment of the homestead associations.

I am unable to find the conclusion justified. Again, to agree with plaintiff, the Court must find that the Supreme Court intended to overrule the savings bank cases and to disapprove the decision of Judge Taft in the Hubbard case and that of the circuit court of appeals in the Hoenig case (in which it had but a few months

earlier denied certiorari), without once mentioning those decisions nor their basis, that is, the power of the state to exempt on the ground of public policy.

I, therefore, find nothing in the decisions of the Hartford, Custer and Shreveport cases which justifies the conclusion that the Supreme Court has departed from the established law announced in the savings bank cases and applied in the Hubbard and Hoenig cases. The most that can be said of these cases is that perhaps the Court intentionally avoided coming to grips with this question, reserving its decision for a future day. Such a speculation scarcely justifies a trial judge in prophesying that the Court will eventually overrule its earlier decisions.

That the Supreme Court had not at that time lost sight of the principles involved in the savings bank cases is made clear by its opinion two years later in *Hopkins Savings Association v. Cleary*, 296 U. S. 315 (1935). Justice Cardozo in the case involving the construction and validity of one provision of the Home Owners Loan Act of 1933, said:

"A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi-public, though for other purposes of classification the corporation is described as private. *Dartmouth College v. Woodward*, 4 Wheat. 518, 668-672. Cf. the statutes and decisions collected by Brandeis, J. in *Liggett Co. v. Lee*, 288 U. S. 517; 548, et seq. This is true of building and loan associations in Wisconsin and in other states. They have been given corporate capacity in the belief that their creation will advance the common weal. The state, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. They

are more than business corporations. They have been organized and nurtured as quasi public instruments. *Louisville Gas & Electric Co. v. Coleman*, *supra*. They may not divest themselves of a franchise when once it is accepted if the local statutes or decisions command them to retain it. See opinion of the court below, and cf. *Thomas v. Railroad Co.*, 101 U. S. 71; *Central Transportation Co. v. Pullman's Car Co.*, 139 U. S. 24. How they shall be formed, how maintained and supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred."

And if the Court by its broad language in the *Hartford* case and by its emphasis on competition in the *Shreveport* case indicated any doubt as to the power of the State to exempt building and loan associations, the congressional act later in 1933 appears sufficient reason for holding that Congress has removed that doubt. I refer to the Home Owners Loan Act of 1933 (12 U. S. C. A. 1461-1468).

By that act, Congress for the first time authorized the organization of Federal Savings and Loan Associations. In doing so, Congress defined its purposes in these words:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regula-



tion of associations to be known as 'Federal Savings and Loan Associations' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States." Section 1464(a).

In Subdivision 9, the act authorized the secretary of the treasury to subscribe for preferred stock in such associations and by subdivision J to invest in full pay income shares of the associations.

Section 1465 provides:

"To enable the board to incorporate local thrift and local home financing and to promote, organize and develop the associations herein provided for or similar associations organized under state laws, there is appropriated" certain sums of money.

And in section 1464H, Congress dealt specifically with the taxation of such associations and provided:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority

shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

While the United States Supreme Court has not, so far as I have discovered, determined the general power of Congress to adopt this act (see *Hopkins v. Savings and Loan Association*, 296 U. S. 315; *Kay v. U. S.*, 303 U. S. 1), the Circuit Court of Appeals (New York) has held that the act is valid as within the constitutional power of Congress to tax, borrow and make appropriations for the general welfare. *U. S. v. Kay*, 89 Fed. 2d 219 (C. C. A.).

I find this 1933 action on the part of Congress very significant.

—In providing for the creation of Federal Savings and Loan Associations, Congress acted under its welfare powers, while in its earlier action providing for national banks, it had acted under its monetary powers.

—In the 1933 Statute, Congress determined that savings and loan associations were "local mutual thrift institutions in which people may invest their funds" and (which) "provided for the financing of homes."

Congress determined that the interest of the people of the United States would be served by the organization and operation of such institutions and that the appropriation of public funds for that purpose was justified.

—Congress determined that the character of savings and loan institutions was so far different from the other financial institutions, that different and preferred tax treatment for the former was justified.

In providing for the taxation of these institutions by the State, Congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of Congress. It could have made such measuring stick the rate imposed by the states on state banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on "other similar local mutual or cooperative thrift and home financing institutions."

Congress thus identified the institutions that it considered to be in competition with Federal Savings and Loan Associations. Obviously, Congress did not consider savings and loan associations to be in competition with banks, either state or national.

This action on the part of Congress appears to be a clear recognition of the principles which underlie the decisions in the savings bank cases, the Hubbard case, and the Hoenig case. It forcefully negatives the claim that Congress, by amending section 5219 in 1923, and by broadening the powers of national banks, intended to change the law with respect to the preferred treatment by the state of thrift institutions.

Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpose of the 1933

act effectively settles the question of the character and purpose of these institutions.

The Michigan Act has not been substantially changed since its adoption in 1887. It continues to provide that building and loan associations shall not do a banking business and shall not accept or advertise for deposits. It has been amended to make it compatible with the Federal 1933 Statute. Its purposes are to continue to be those stated in the Federal Act, namely:

“To provide local mutual thrift institutions in which people may invest their funds” and (which) “provide for the financing of homes.”

The proofs do not support a finding that there has been any material difference between the Michigan institutions of the present day and those organized under the Federal Statute.

There remains one further question on this branch of the case. The rule, as stated in the savings bank cases, was that the power of Congress to exempt or prefer those institutions on the ground of public policy was subject to the limitation that the exemptions “should be founded upon just reason and not operate as an unfriendly discrimination against investments in national bank shares.”

Both the reasoning of the courts in the savings bank cases, the Hubbard case and the Hoenig case, and the provisions of the 1933 Act relating to Federal Savings and Loan institutions, and those of the Revenue Code giving preferred treatment to such associations in their income taxes (26 U. S. C. A. 116C, 591) furnish convincing proof that Congress had determined and the others recognized just reason for the exemption of preferred tax treatment of these associations.

Upon the trial, plaintiff contended that the Michigan Intangible Tax Act, as amended, imposed a tax on the shares of national banks which was substantially greater than that imposed on building and loan shares.

Defendant answered that because of the difference in character of the two institutions, the actual burden of the tax imposed on building and loan associations and its stockholders was from an economic standpoint substantially equal to the burden imposed on national banks and their stockholders. Citing *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373, and *Tradesman Bank v. Tax Commission*, 309 U. S. 560.

In the *Amoskeag* case, the Court said:

"The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book values'—which may be more or less favorable than the method adopted in valuing other kinds of personal property."

In the *Tradesman Bank* case, the Court said:

"A consideration of the course of judicial decision on R. S. 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank v. Hartford*, 273 U. S. 548; *Amoskeag Savings Bank v. Purdy*, 231 U. S.

373; *Covington v. First National Bank*, 198 U. S. 100; *Lionberger & Rouse*, 9 Wall. 468. Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373; *Covington v. First National Bank*, 198 U. S. 100."

Defendant further quotes from an article in 31 *Harvard Law Review*, 324, 367, in which the author states:

"\* \* \* So long as substantially equivalent burdens are imposed on all other economic values by taxation of tangible property and of the capital and franchises of corporations, it would be absurd to insist that the exemption of one or more of the legal forms of property in which those values may be represented, results in taxing shares in national banks at a greater rate than that imposed on other moneyed capital. The rule of the *Mercantile Bank Case* practically comes down to a disregard of formal legal discrimination where there is in fact no substantial economic discrimination."

Reference is also made to *Woolsey*, page 24:

"\* \* \* Since the restriction in §5219 does not require that the state shall apply the same mode of taxation to national bank shares that it applies to other property provided no injustice, inequality, or unfriendly discrimination arises therefrom, the rate of taxation must refer to the actual incidence and



practical burden of the tax upon the taxpayer.' \* \* \*  
(Citing *Covington v. First National Bank of Covington*, and *Amoskeag Savings Bank v. Purdy*.)

Plaintiff answers that *Minnesota v. First National Bank*, 273 U. S. 561, effectively disposes of this issue in favor of the plaintiff.

Whether or not the substantial equality from an economic standpoint of the burden imposed is the proper test under section 5219 and the decision in the *Minnesota* case is unnecessary to the decision of this case in view of the conclusion to which I have come. However, the fact that the economic burdens imposed by the Michigan Statute are not at great variance is of force in determining whether the legislature in its treatment of taxation of savings/building and loan associations acted upon the grounds of sound public policy or for the purpose of an unfriendly discrimination against national banks.

I find nothing in the proofs or the law to indicate such a hostile intention on the part of the Michigan Legislature. Rather, it appears that such preference as may exist resulting largely from the difference in the character of the two institutions, was in pursuance of an established public policy long existing in the states and long recognized by the courts and by Congress as being justified by the purpose and object of savings/building and loan associations.

Accordingly, I conclude:

1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, pro-

vided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

5. That Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.

Plaintiff further contends that the Michigan Intangible Tax Act, as amended (M. S. A. 7.556(2a)) imposes a tax "on the privilege of ownership" of shares in national banks, and that section 5219 permits only a tax upon

"the shares of national banks" and does not permit a tax upon the "privilege of ownership" of such shares.

It must be agreed that if there is a legal difference between a tax "upon shares," a tax upon "the ownership of shares" and a tax upon the "privilege of ownership" of shares, the Michigan Statute is not too clear as to the type of tax here intended.

The Statute provides that:

"There is hereby levied upon each \* \* \* owner of shares of stock of national banking associations \* \* \* and there shall be collected from each owner an annual specific tax on the *privilege of ownership* of each share of such stock \* \* \*. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies."

In *Goodenough v. Department of Revenue*, 328 Mich. 56, the Court, in deciding the nature of the tax imposed by section 2 on intangible personal property generally, had before it substantially the same language, that is:

"There shall be collected from such owner an annual specific tax on the privilege of ownership of each item of such property owned by him."

The Court quoted with approval from *Dawson v. Kentucky Distilleries*, 255 U. S. 288, in which the Court said:

"The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidence."

The opinion in the Dawson case was written by Justice Brandeis and in it, he further said:

"To levy a tax by reason of ownership of property is to tax the property." Citing among other cases *Thompson v. Kreutzer*, 112 Miss. 165.

In the latter case, the Mississippi Court said:

"Ownership is not a privilege conferred by government, but is one of the rights which governments were organized to protect. Discarding, then, the word 'privilege' and substituting therefore the proper word 'right,' the distinction here sought to be made by the attorney-general is one without a difference. In a strict legal sense, 'property' (from the Latin word *proprius*, meaning belonging to one; one's own) is synonymous with the 'right of ownership' and means one's exclusive right of possessing, enjoying, and disposing of a thing. Burdick on Real Property, 2; 2 Blackstone, 2; 6 Words & Phrases (First Series) 5697 et seq.; 23 Am. & Eng. Enc. Law (2nd Ed.), 259; 32 Cyc. 647.

"Property may also be, and in the section of the Constitution here under consideration is, used to signify 'things owned.' In order that a thing may be owned, some one must, of course, have the right to the ownership thereof. A tax on a thing is a tax on all its essential attributes; and a tax on an essential attribute of a thing is a tax on the thing itself. So that, a tax on a thing owned is necessarily a tax on the right of ownership thereof; and a tax on the right of ownership of a thing is necessarily a tax on the thing itself. No definition of property can be framed which does not include the right of per-

ship. Consequently, no tax can be imposed on the right of ownership which is not also a tax on property."

The proofs and the arguments in this case very forcefully demonstrate that the impact of the Michigan tax is upon the shares of plaintiff bank. Judging the tax by its incidence, I find no basis for holding that it is not a tax upon "the shares of national banking associations" within the meaning of that term as used in section 5219.

It is my opinion that the Michigan Intangible Tax Act, as amended, does not violate the Revised Statutes, Section 5219. A judgment may be entered for the defendants.

As I read section 16 of the Court of Claims Act (27-3548(16)), the matter of costs is one of discretion.

The question here is a public one and one in which the State of Michigan and its various financial institutions are much interested. I do not feel that costs should be awarded against the plaintiff and the judgment shall, therefore, read "without costs."

Fred N. Searl,  
Circuit Judge.

Dated this ... day of January, 1959,  
at Grand Rapids, Michigan.

**JUDGMENT OF NO CAUSE OF ACTION**

(Filed January 26, 1959)

At a session of said Court held in the Stevens T. Mason Building, Lansing, Michigan, on the 23rd day of January, A. D. 1959.

Present: The Honorable Fred N. Searl, Circuit Judge for Kent County, acting Judge for the Court of Claims.

This matter having come on to be heard from time to time in this Court, and the Court having considered the documentary evidence and testimony of witnesses and arguments and briefs of respective counsel in this cause, and the Court having rendered its opinion wherein it determined that the plaintiff is entitled to no judgment against the defendants and that a public question is involved.

It is hereby ordered, adjudged and decreed that a judgment of no cause of action be entered against the plaintiff, without costs to either party.

/s/ Fred N. Searl,

Circuit Judge, acting Judge of  
the Court of Claims.



**CLERK'S NOTICE OF ENTRY OF ORDER**

Notice is hereby given, in accordance with the Court Rules in such case made and provided, that Judgment of No Cause of Action was duly entered in the above entitled cause on January 26, 1959.

Helen Kohler, Clerk.

To: Butzel, Eaman, Long, Gust and Kennedy,  
1881 National Bank Building,  
Detroit 26, Michigan.

William D. Dexter, Esq.,  
Assistant Attorney General,  
Michigan Department of Revenue,  
Tussing, Building,  
Lansing, Michigan.

State of Michigan,  
County of Ingham—ss.

Helen Kohler, Clerk of the Court of Claims, being duly sworn, deposes and says that she served a true copy of the above Notice upon the above-named attorneys, by placing one copy in each envelope securely sealed and addressed to said attorneys at their respective addresses above stated and depositing the same in the Branch Office of the United States Post Office located in the Stevens T. Mason Building, Lansing, Michigan, with postage thereon fully prepaid, on January 26, 1959.

Helen Kohler.

Subscribed and sworn to before me this 26th day of January, A. D. 1959.

Egene A. Daher,  
Notary Public, Ingham County, State of  
Michigan.  
Commission expires October 12, 1962.

*Excerpts from Transcript of Testimony; 115a*  
*Statement of the Court*

EXCERPTS FROM TRANSCRIPT OF  
TESTIMONY

(1) Lansing, Michigan,  
Monday, May 19, 1958.

(The Defendants' Motion for Summary Judgment was orally argued by Counsel for the respective parties, following which the Trial Court denied the Motion and made the following statement in support of its denial.)

(120) The Court: \* \* \* As I sat here and listened to all these very fine arguments and realized that eventually this case will probably find its way to the Supreme Court of the United States, which will write perhaps one or more opinions, it seems a little presumptuous for a circuit trial judge to sit here and decide, after hearing arguments for an hour or so, the legal problems involved. \* \* \* At any rate, that is the responsibility that one has.

(121) I will say, not that it is important at all, but counsel are entitled to know it, that this does not represent a snap judgment. It may turn out to be 100 per cent wrong, but after his motion was made and the Attorney General filed what to me was a very persuasive brief, I spent quite a little time at nights and other times in reading the authorities that seemed to be appropriate.

There were three annotations, as you gentlemen undoubtedly know, in the Michigan Law Reports. There is this book written by Professor Woosley, who views the subject, as well as some other standard texts. I made some notes here because I was not entirely sure as to

just what I would find readily available in the way of a library. I knew I only had to walk over to the Capitol to get all kinds of books, but I wasn't so sure about this building, but Mrs. Kohler has raided somewhere or other and has brought me some books that I have here before me. But I did make some notes that I have available, some of the things that the Supreme Court has said.

(122) It seems to me that it is the responsibility of the Court to deny the motion for a summary judgment and to permit the plaintiff to prove, or attempt to prove, or have the opportunity to prove actual discrimination and actual competition.

I have read these cases to which reference has been made very carefully by the lawyers, and I do not think that I would add a great deal to what has been said by reviewing at length the opinions, nor my reasons for feeling that they are not conclusive as a matter of law here.

One or two or few principles have impressed me as we have listened to the argument, read the briefs and read the cases.

In the first place, what is the purpose of Section 5219?

It seems to me that has something to do with whether we are to say that we must construe it in the light of the financial institutions which were in existence at the time the act was passed, or whether we are to say it was a sort of live inhibition which applies to all financial institutions as they come into being, if they are to measure up to a certain yardstick as to whether they are or are not within the ambit or purview of this section.

I find quoted here in 59 A.L.R. 14—I don't remember (123) which case it was first stated in; apparently the Palmer case—but at any rate, the purpose of the restriction stated:

"The intent or purpose of the restriction that the rate of taxation should not be greater than that assessed upon other moneyed capital in the hands of individuals, appended to the grant by Congress to the several states of power to tax the shares of national banking associations, was to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks by favoring shareholders in state banks, or individuals interested in private banking, or engaged in operations and investments normally common to the business of banking."

And there are cited a substantial number of cases, a column of them here, from the United States Supreme Court, the Federal Courts, and many of the State Courts to support that summary of the purpose.

Now, if that be the purpose of the act of Congress, if Congress in saying to the states that this federal agency may be taxed by the states, but only on certain conditions, if that be the purpose, it doesn't seem to me that we should construe it to apply only to those institutions which were in actual competition with national banks at the time the act of Congress was passed, and thus leave the door open by changing (124) the nature of the institution or in changing economic conditions, changing needs of one sort or another for financial institutions, leave the door open for a state to create and foster an unequal and unfriendly competition by new institutions or old institutions which, due to changing conditions, either on the part of the banks or the institution, or some other reason, are now in competition when they were not before.

Now, in saying that, I again want to repeat what I have said several times, and I hope I keep on saying it so that my remarks are not misconstrued.

I am not ruling at this time, of course, that these institutions here involved, savings and loan and building and loan institutions are in competition. What I am saying is that I think it is a question of fact, and that the plaintiff should have a right to prove those facts, as it has alleged it can prove them.

As we read these other cases that are relied upon, it doesn't seem to me that the actual holdings are conclusively that as a matter of law a building and loan association cannot be in competition with a national bank.

Now, of course, the first case was the Mercantile case in the East having to do with a savings bank, and the court found that these were not in competition.

Then Justice Taft, Judge Taft on the Circuit, (125) had before him an Ohio case, and he said:

"It seems to me that building associations are certainly not be differentiated in their purpose or object, or practical effect, from savings banks and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks."

Now, one of the interesting things about that particular case is that it eventually wound up in the United States Supreme Court on a different question, and the question before the Supreme Court was whether certain previous decisions involving the same bank were res adjudicata on the question of discrimination.

The Supreme Court in a case in 186 U.S. 458 affirmed Judge Taft's decision, but so far as I could read it, and I read it rather hurriedly, I found no references to building and loan associations or building associations. But the Court did say this interesting thing in discussing this question of res adjudicata, a former decision of the Court that there had been no discrimination in certain years. They first quoted Judge Taft on that point:

"Looking into the bill, however, in the former (126) case, and after an examination of the case of National Bank of Willington, v. Chapman, I find that, in order to support the averments of the bill, it was necessary in that case for the complainant to rely not only upon the statute of Ohio defining credits, but also on its practical effect in exempting moneyed capital in the hands of individuals in Ohio from taxation. The practical operation of a law of that character, to show how much, if any, discrimination there is, is a question of fact to be determined on the evidence."

"The adjudication, therefore, upon which the complaint relies is an adjudication not of law, but of fact; not of the fact at issue in the present case, but of the fact as to the practical operation of the law at the time of the adjudication, to wit, in 1887, 1893 and in 1894."

The Supreme Court of the United States affirming Judge Taft said this:

"And we need not point out that judgments based on such discrimination in 1885, 1887, 1893 or 1894 cannot be conclusive proof of the existence of discrimination in 1896 or 1897."



Now, the Court there was talking about a discrimination and not competition, but I don't see too much difference in principle. Whether there was discrimination (127) in the operation of the particular law between the bank and other institutions in one year was not conclusive as to there being discrimination two years later; and I believe as a matter of principle there is not too much difference between that and saying that a finding that there was no competition in 1933 is not conclusive that there is no competition in 1952.

Counsel have quoted at length from the Hartford case. I have made several notes of it, but I will not take the time to read them, except one that would seem to be applicable here.

"The question thus raised involves considerations both of fact and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the state and the relation of its employment, in point of competition, to the business of plaintiff and other national banks. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned within the spirit and purpose of the statute. The question is thus a mixed one of law and fact, and in dealing with it, we may review the facts in order correctly to apply (128) the law."

This other case, the Hoenig case, if that were the only case on the subject, I would say that it would be quite persuasive that building loans were to be treated as entirely a species of institutions which could not be in

competition. There is much said in that majority opinion that would rather lead one to feel that that is the way the majority of the Sixth Circuit Court of Appeals felt, although there is some language which allows counsel on the other side possibly to find some comfort.

In talking about the building loans, they quoted Justice Taft to say that the purpose of these institutions is still to encourage the building of small houses by poor people and the savings from the earnings week by week in an amount sufficient to pay the mortgage debts incurred for the purchaser of land and the construction of the house.

Then the Court of Appeals goes on and says this:

"Practically all loans are of the amortized type in which payment is spread over a period of from ten to twelve years. National banks perhaps might, but as a matter of fact do not, and in the interest of good banking, should not, invest their funds generally in this manner."

I wonder if the bankers and building and loan association would care to have the Court of Appeals of 1933 (129) tell them how they should run their business. I doubt if they think that was conclusive today.

Whether national banks should, in the interest of banking, invest funds in this manner is something it seems to me you can't say that that is a legal decision that is like the law of the Medes and Persians and can never be changed.

So that case, while it does contain much language that supports the position of the defendant, it doesn't seem to me that it is conclusive.

I have not examined the record as Mr. Klein suggested, but there at least is reason to feel that the basis of the

court's opinion in part at least was founded upon fact.

Now, we have already discussed at some length this Shreveport, Louisiana, case. It has been pointed out by all of us that the court in discussing the effect of the Fourteenth Amendment does say there is sufficient basis for classification between building and loans and banks, but when we get over to discussing the matter of 5219, they talk strictly upon the factual proposition, and they say, in addition to what I think has been read here:

"The Supreme Court (of Louisiana) found: 'The testimony leaves no doubt that there has been no competition with national banks on the part of any concern lending (130) money on mortgage or real estate, because the national banks will never handle such loans.' The record contains evidence ample to support that finding."

That is a finding of fact, so that we must assume that the Court recognized that it was in part, at least, a factual question.

I have not spent very much time on the effect of this legislation. The argument can be made, as counsel have made, that one may draw a conclusion from the course of the legislation since 1933 that Congress intended that this statute and various other acts to be mutually exclusive.

On the other hand, it seems to me that that is somewhat a double-edged sword. After all, if Congress didn't change Section 5219, they left that reading just the same, and if they had intended that could be discrimination against national banks in preferring building and loan or savings and loan associations, it would have seemed rather easy to have written such an exception in Section 5219 rather than ask the courts to draw the conclusion from its failure to act.

. . . . .

I am not going to speculate very much about what Congress meant when they didn't do something. When they do something, I will try to figure out what they meant, but when they didn't, I am not going to deny to the plaintiff the right to prove actual competition if they can do it. It is up to them.

Again I repeat, I may have been careless in some statement here, but I have no intention deciding this time that there is actually competition. That is a question of fact, and possibly a mixed question of fact and law to be decided when we get down to the end of the evidence.

What I am saying is I think it is a question of fact on which the plaintiff has a right to put in his proofs.

The motion is denied.

(143) **ESLER, BERTHA**, was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

Q. What is your official position?

A. I am Director of Incorporations of the Michigan Corporation & Securities Commission.

Q. And how long have you held that office?

A. I have been in that position for about twenty-five years.

Q. And that is with the Michigan Corporation & Securities Commission?

(144) A. Right.

Q. And were you with the Secretary of State's office before that?

A. I was.

Q. And did you do the same kind of work at the Secretary of State's office?

A. I did.

Q. And just what do your duties entail, Miss Esler, in this position?

A. Well, the keeping of—

Q. (Interposing): I know they are many, but I am talking particularly in respect to annual reports and privilege taxes.

A. I am so-called custodian of the records. I do not compute the fees in connection with the reports. They are there, and so forth.

Q. And if a report which should be filed is not filed, is it the duty of your office to follow up with that particular corporation and inquire why the report is not filed?

A. Our office does.

Q. Under your direction?

A. Under the direction of Miss Sawasky. I do not have charge of the filing of the annual reports. I testify to the records—if a corporation is delinquent, we are compelled to ask for a certificate. I can then testify because I make the search.

Q. And if any corporation required to pay a privilege fee fails (145) to pay such fee, it is under your jurisdiction to follow that up, is it?

A. No, sir, it is not. It is under the jurisdiction of Miss Sawasky, who has charge of the Annual Report Division.

Q. However, you do check records as to whether the fees have been paid?

A. I am in a position to know whether they have or not, yes.

Q. I see. I will show you a two-page letter, a copy of it, dated May 14, 1958, which has been marked Exhibit 24, directed to Mr. Gabow and to yourself on the Michigan Corporation & Securities Commission, and Mr. Doty, and ask you if you received the original of that letter or one of the duplicate originals?

A. I did.

Q. And did you, pursuant to that request, make an examination of the records of the Michigan Corporation & Securities Commission as requested in that communication?

A. Respecting the savings and loan, building and loan association, I did.

Q. Yes. And in respect to the statement in the first two paragraphs of Exhibit 24, page 2, would you tell the Court whether or not, insofar as the Michigan Corporation & Securities Commission—

\* \* \* \*

(146) Q. \* \* \* —is concerned, the statements therein contained are true and correct? Just say yes or no.

\* \* \* \*

A. May I understand this clearly. This is Exhibit 24?

Q. (By Mr. Klein): Yes.

A. You want me to testify as to the—

Q. (Interposing): The first two paragraphs on the top of page 2, insofar as the Michigan Corporation & Securities Commission is concerned.

\* \* \* \*

(147) A. I believe this will answer the question: That the Michigan Corporation & Securities Commission has never received an annual report or a privilege fee in connection with a savings and loan or building and loan association.



Q. (By Mr. Klein): At any time?

A. At any time.

Q. That goes back from 1935 to date?

A. That's right.

Q. And has it been the interpretation of your office that such associations are not obliged to either file reports with your office or to pay privilege fees to your office?

A. It has always been so interpreted that we are not in any way responsible for the savings and loan associations.

Q. Nor to collect any fees from them?

A. Nor to collect any fees.

Q. Nor to get any reports from them?

A. That's right.

\* \* \*

(148)

Gross Examination

By Mr. Dexter:

Q. Miss Esler, do you have anything to do whatsoever with the annual reports and fee determination of the Michigan Corporation & Securities Commission?

A. I do not.

Q. Do you have anything to do with the policy of determining whether or not annual fees are required to be paid by corporations?

A. I do not.

Q. That would include the annual fees of the savings and loan associations?

A. That is right.

Q. What did you mean by your statement in reference to the practice of the office? Was that something you just heard?

A. No, I happen to know that it is.

(149) Q. How did you happen to know?

A. There has been even prior to the time before we were the Michigan Corporation & Securities Commission.

Q. In reference to the 1952 situation, how did you come across that knowledge, Mrs. Esler?

A. Well, I might say I suppose in general understanding of being there.

Q. Was it hearsay? Did you hear it?

A. No. Because we have never had the savings and loan associations in our office, even when we were a part of the Secretary of State's office.

Q. But I am speaking in reference to the fees, the computation of a fee under a statute.

A. That's right. I do not have jurisdiction over the computation of the fees.

Q. Do you know whether or not any fees were, in fact, paid to the Corporation & Securities Commission pursuant to Act 85 of the Public Acts of 1921, as amended, for the year 1952, as far as building and loan associations are concerned?

A. It is part of my responsibility to know something about the filing of the annual reports, and I happen to know that they are not there.

Q. Do you know that there was no fees paid?

A. That's right; there were no fees paid.

. . . . .

(150) DOTY, ETHAN A., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

Q. . . . your official position with the State of Michigan, sir?

A. Director of the Building and Loan Division, which is a division of the Secretary of State's office.

Q. And you have held that position for how long, sir?

A. Since July 1, 1950.

Q. And in that connection, do I correctly understand that, under the building and loan statute, it is your responsibility to make certain that the annual reports of the building and loan associations were filed in '52 and years prior?

A. Yes. Section 19 of the building and loan statute requires an annual report to be filed in the office of the Secretary of State as of June 30th each year by each state chartered association.

Q. And when did it become the law for federal savings and building (151) and loan associations to file such reports?

A. An Act of 1954 required that Federal chartered savings and loan associations situated in the state of Michigan should make their first annual report as of June 30, 1955 and submit it for the year ended June 30, 1955, the fiscal year ended.

Q. So that prior to that time, no such reports were filed by Federal savings and/or building and loan associations?

A. Not with our office.

Q. And no fees were paid by Federal associations of that kind prior to that time?

A. That's correct.

(153) Q. . . . In the years 1950 to 1952, inclusive, what was the annual privilege fee collected by the Secretary of State from state savings and building and loan associations?

A. One quarter mill on each dollar of its paid-in capital and legal reserve, as required by Section 4 (a) of Act 85, Public Acts of 1921.

Q. Do you know whether the Secretary of State ever collected a four mill tax from any building and loan association in those years?

A. Not to my knowledge.

(154) Q. And do you know what the practice of your office was prior to 1950 in that respect?

A. It was the same.

Q. And was it the interpretation of the Secretary of State's office that the four mill annual privilege tax did not apply to building and loan associations and savings and loan associations?

A. That was the interpretation, because of the specific provision in Section 4 (a).

Q. Well, at all events, you never did collect any more than a quarter of a mill?

A. That is right.

Q. And have you collected more than a quarter of a mill at any time since 1952?

A. We have not.

Q. (By Mr. Klein, continuing): During the year 1952—do I correctly understand that federal savings and

federal building and loan associations neither filed annual reports nor paid privilege fees to the Secretary of State's office?

(155) A. That is correct.

Q. Since 1954 have they filed such reports and paid such fees?

A. They have, beginning with the fiscal year ended June 30, 1955.

Q. Did your office in 1953, or prior, endeavor to collect more than the quarter of a mill fee from any savings and/or building and loan associations?

A. No.

Q. You did not. Now, I understood your testimony, Mr. Doty, in connection with your duties and responsibilities, you supervised the filing, or at least the receiving of annual reports from state building and savings and loan associations each year as of June 30 of that year?

A. That is a function of our division, yes.

Q. And then do I correctly understand that under a section of the statute—if you will point it out to me—you are required to file, under Section 28, an annual report of condition of such associations to the Governor of the State of Michigan?

A. That is true.

Q. I will show you Exhibit—well, to start with, I will show you Exhibit No. 30 and ask you if that is a printed copy of a report from the Secretary of State's office on building and loan and savings and loan associations for the fiscal year ended June 30, 1952, under the facsimile signature of (156) F. M. Alger, Secretary of State?

A. That is true.

Q. And it bears the date of September 22, 1952?

A. That is the letter of transmittal date.

Q. Yes. And contained in that printed report are the financial statements of some thirty-six state savings and/or building and loan associations in Michigan for the year ended June 30, 1952, is that correct, sir?

A. That is correct.

Q. And those reports state the assets, liabilities, statement of operations, and earnings, first mortgage loans—

. . . . .

Q. (By Mr. Klein, continuing): Number of invested share accounts, and dividend rates during the year?

A. That is correct.

Q. Did they cover all Michigan savings and/or building and loan associations for that period?

(157) A. They did.

Q. Upon what were these printed reports of financial conditions based?

A. We say in the "comments" that all the contents of that report were prepared from the annual report submitted by each association; and that is the source of all the information within that printed report.

Q. Do you have the copy of those reports with you?

A. Yes.

Q. The actual reports as filed?

A. Yes.

Q. And have you compared these printed reports of financial condition, as contained in Exhibit 30, with the reports of the respective associations filed with your office?

A. If you would say that we compared it at least three times in proofreading and preparing this printed report, I would say that we have certainly compared it.

Q. And under what section are the officers of the building and/or savings and loan associations, or were they, required to file such report?



A. Under Section 19 of the building, savings and loan statute.

Q. And are these reports made under oath?

A. They contain a sworn statement as a part of the cover piece.

Q. And they are to be signed by the president and secretary (158) of such association?

A. That is correct.

Q. And do you know whether or not there is any penalty or provision in the statute in respect to falsification of such reports by such officers?

A. Not in that particular section. In another section of the statute there is provision for penalty for incorrect reporting.

Q. Is that Section 27?

A. That is right.

Q. And it makes it a felony, punishable by one to ten years, if there are any false reports, does it not, sir?

A. Yes.

Q. And was Exhibit 30 prepared by the Secretary of State, Building and Loan and Savings and Loan Division, pursuant to the requirements of the statute to which you referred before?

A. It was prepared under the Section 19 requirement. I couldn't say whether it was prepared under Section 28 requirement.

(159) Q. It was prepared pursuant to a statutory requirement?

A. That is right.

Q. And do these statements show—I think we have covered it—the amount of mortgages outstanding as of the date of June 30, 1952?

A. That is true.

Q. And it shows the amount of the share investment account, or shares, does it not, sir?

A. It does.

Mr. Klein: I should like to offer Exhibit 30 in evidence.

. . . . .

~~(160) Mr. Dexter: Defendants would object to Exhibit 30 as not the best evidence of the facts attempted to be established by the introduction of such exhibit.~~

Q. (By Mr. Klein): Do you have the reports here which can be compared with this? Do you have the actual reports of the associations with you in hand?

. . . . .

(164) Mr. Klein: . . . I might ask this witness some further questions, because it might help your Honor in his ruling.

Q. (By Mr. Klein): Are you required, Mr. Doty, or your department, to examine the books and records of these associations under the law?

A. Yes.

Q. And did you have occasion to examine the correctness of the reports as contained in Exhibit 30?

A. No, for the reason that the examination is made at various times throughout the year, and the annual reports are based on the financial condition as of June 30 in each year.

Q. But you are charged with the duty, are you not, of collecting the fees based on a correct report as of June 30, 1952, for that year?

A. Yes.

Q. And therefore it would be your duty to determine whether that report or those reports correctly stated the financial (165) condition of the company so that you could get the correct fees?

A. For that we depend on the statutory requirement for the sworn statement.

. . . . .

(168) The Court: At the present time the report will be received, but on the condition that we have subsequent proof as to the accuracy of the reports which were made to the Secretary of State by the various associations.

. . . . .

(170) The Court: Well, they haven't yet been offered.

Mr. Klein: I have offered Exhibit 30 at the minute.

Q. (By Mr. Klein): I have had marked Exhibit 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, and ask you if these are the similar type of reports from the Secretary of State for the years ending June 30, 1947 through June 30, 1951, and from June 30, (171) 1953 through June 30, 1957?

A. Yes, they are.

Q. And they were prepared in the same manner and published under the same requirements, statutory requirements, as you have indicated in respect to Exhibit 30?

A. They were.

Mr. Klein: I should also like to offer Exhibits 25 through 29, and Exhibit 31 through 35, inclusive, into evidence, sir.

Mr. Dexter: I object, your Honor, for the same reasons that we object to the admission of Exhibit 30, and would also object to the admissibility of those outside of the year 1952 for the reason that we have a question of fact solely relating to the condition of competition for the calendar year 1952, and as your Honor ruled in reference to the plaintiff's motion for a summary judgment, it is factual within each particular period, and therefore,

any reports or evidence outside of that period are immaterial.

(172) The Court: Well, let's take one thing at a time there.

As far as the exhibits prior to 1952, I would think that they would be admissible if Exhibit 30 is admissible. It seems to me that that bears upon growth over a period of years prior to 1952, but if there wasn't discrimination in 1952, the fact that there may have been in '53 or '54 doesn't help us, or doesn't help you any, as far as '52 is concerned, does it?

Mr. Klein: Part of 1953 contains the last six months of '52, sir.

The Court: Well, it may be there is an overlapping of dates there that would make one additional exhibit admissible.

Mr. Klein: Yes.

(174) The Court: But my ruling is, at this time at least, before Exhibit 30 can be received finally, there must be received in evidence the reports upon which Exhibit 30 was based.

Q. (By Mr. Klein): Do you have the reports for the year ended June 30, 1952 and the year ended June 30, 1953, sir, with you?

A. Yes, I have them in the back of the room here.

(175) The Court: As far as that part is concerned, you are not objecting that this is a printed copy?

Mr. Dexter: No.

(181)

Lansing, Michigan.

Tuesday, May 20, 1958,

9:30 o'clock A. M.

(The hearing of this cause was resumed pursuant to the adjournment.)

The Court: Have I made a definite ruling an Exhibit 30? Can you tell me that?

Mr. Klein: You made a conditional ruling. On page 168, sir, of the transcript, you said:

"At the present time the report will be received, but on the condition that we have subsequent proof as to the accuracy of the reports which were made to the Secretary of State by the various associations."

The Court: Now, I want to reopen that subject.

. . . . .

(196) The Court: You may cross-examine Mr. Doty if you wish or make any record you wish, but as far as I am concerned, I have come to the conclusion that as far as this is concerned, I am going to assume the Secretary of State performed his duty, and if he did perform his duty (197) under these rules that I have read from Corpus Juris, unless they don't apply in Michigan, and they seem to apply in every state in the Union—in fact, there are possibly one or two Michigan cases that can be distinguished that in general recognize it. One of them I made a note of, 159 Michigan, 424, but there are others cited in Corpus Juris.

Unless that rule doesn't apply in Michigan, and I can't conceive that the Michigan Courts are out of line with everybody else in the country on things of this sort, I am

going to change my ruling from yesterday and assume when an officer of the state such as the Secretary of State is required by law to make certain reports, make certain findings in order to make his report, I am going to assume he performs his duty, and I think the reports are admissible under the rule that has been stated here and quoted here.

Now, that doesn't mean that that is conclusive proof. You have a right to cross-examine the Secretary of State. You have the right to have produced, if you wish—after all, you represent the State. You are hardly like a private suitor. But, nevertheless, you have a right to have produced, if you wish, the reports or audits or anything else you want over there. If there is any question about any of those reports, we will give you the opportunity to cross-examine the persons who made the audit or the (198) persons who, on behalf of the association, signed and swore to it.

In other words, I am not depriving the State of Michigan from full right of not only proving that they are not true, but cross-examining as to their truth.

You can cross-examine anybody you want to. We have already got some of these people under subpoena, I suppose, coming in here, but, if necessary, you can have the rest of them. I have got all summer I can give you to make any record you want.

Mr. Dexter: For the record, I would like to clarify this right now. Is your Honor ruling that these exhibits are admissible as—

The Court (interposing): I am ruling that Exhibit 30 is received.

Now, I will hear separate arguments on the group of reports that were prior to 1952 and those afterwards. There may conceivably be some other points that apply



to them as to materiality, but as far as competency are concerned, I am ruling that the reports of the Secretary of State made pursuant to his statutory duty are to be received in evidence.

Mr. Dexter: As proof of what?

The Court: Proof of the facts which he finds therein pursuant to the statute.

Now, when he expresses a view as to whether they (199) perform an important function or not, I am not accepting that as being evidence. That is an opinion. But as far as he is stating the condition of those associations, they are received in evidence as proof of them. Not conclusive proof, you understand.

. . . . .

(201) Mr. Klein (interposing): All right. We would like to offer Exhibit 25, which is the report of condition of the Secretary of State to the Governor for the year ended June 30, 1947.

Exhibit 26, a similar report, type of report, pursuant to statute, for the year ended June 30, 1948.

Exhibit 27 is a similar report of the Secretary of State to the Governor for the fiscal year ended June 30, 1949.

(202) Exhibit 28 is a similar annual report of condition by the Secretary of State to the Governor for the fiscal year ended June 30, 1950.

Exhibit 29 is a similar annual report from the Secretary of State to the Governor of the condition for the year ended June 30, 1951.

And, Exhibit 31 is a similar annual report from the Secretary of State to the Governor of the condition of Building and Loan and Savings and Loan Associations for the fiscal year ended June 30, 1953; which contains part of the 1952 business.

. . . . .

(203) The Court: . . . I wonder if we could not reserve further consideration of these other exhibits, these exhibits other than 30 and 31? 31 may be received as being the same class as 30, because they both cover the year 1952, but the others, I wonder if we cannot reserve those until we have given these others an opportunity to be heard. And, in addition to that, it is (204) quite conceivable that some of the things they say will bear upon the reasons you have given for admission, so I would rather reserve decision on these others, both before and after the year 1952, and we can go ahead and not have the other witnesses wait any longer.

. . . . .

(205) DOTY, ETHAN A., was thereupon recalled as a witness herein on behalf of the Plaintiff, and, having been previously duly sworn, testified further as follows:

*Direct Examination (continued)*

By Mr. Klein:

Q. Mr. Doty, I wanted to clear up one point.

Referring to Exhibit 30, I believe I asked you some questions about that yesterday. Would you look at Section 28 of the Building and Loan Association Code?

. . . . .

Q. Now, referring to Exhibit 30, was Exhibit 30 prepared by the Secretary of State's office pursuant to Section 28 of the Building and Loan Association statute of Michigan?

(206) A. It was.

. . . . .

Q. \* \* \* And the same applies to Exhibit 31, does it not?

A. Yes.

Q. And were these reports reports to the Governor by the Secretary of State of the conduct and condition of all building and loan associations doing business in the State of Michigan for the years ended June 30, 1952 and June 30, 1953, respectively?

A. They were prepared on the same basis.

Q. Were they a report of the conduct and condition of all building and loan associations doing business in the State of Michigan during those periods?

A. They were, based upon the the annual reports filed.

Q. It was your duty, was it not, sir, to report on the condition?

A. According to the statute, yes.

(297) Q. (By Mr. Klein): You are in charge of that department, are you not, sir, for the Secretary of State?

A. Yes.

Q. And in making those reports, you were of the opinion that you were discharging your duty in reporting as to the condition of those associations for those periods?

A. That is correct.

Q. And you had the power to make examinations of any of the records and books of the associations in question before making that report?

A. Yes.

Q. And if you found any errors in the report; you would have indicated the correct facts in your reports, would you not?

A. Definitely, yes.

Q. And it was your opinion, in making those reports, that those reports truly and correctly reflected the condition of the associations in question for those periods?

A. Yes.

(208) Q. And does the same obtain, as far as you know, to Exhibits 25 through 35, inclusive?

A. Yes.

Q. Do you have with you the monthly report for the month of December, 1952, of these associations, the state associations, which I will show you on page 8 and 9 of our Affidavit of Merits?

. . . . .

(211) Q. (By Mr. Klein): Mr. Doty, take the report, if you will, for the year ended December 31, 1952. I am not going to ask you the detail of it. I just want—

A. (Interposing): Which report?

Q. Of the Capitol Savings & Loan of Lansing.

A. Annual report, monthly—

Q. (Interposing): The monthly report of December 31, 1952.

. . . . .

(212) Q. (By Mr. Klein): Without showing the figures, the Court has, I believe, instructed you to indicate what is on the form.

(213) A. It is a balance sheet statement of assets and liabilities which is similar to that published in the annual report.

However, the lower section of the report is captioned "Supplemental Information," and contains information of the nature of the operating expense for the month, the gross earnings for the month, the analysis of all mortgage loans closed during the month in five different categories, total of mortgage loans closed, mortgage loans or land contracts purchased during the month, what price

was paid for them, the total number of saving share accounts at the end of the month, the amount of withdrawals during the month, the amount of new private capital received during the month, the real estate activity during the month, the actual cash receipts for the month; also, the amount of money paid on applications for withdrawal, and a statement signed by the managing officer certifying that the information was taken from the books and records of the association as of the date indicated, and, to the best of his knowledge, were true and correct.

Q. And that type of monthly report is filed by each building and loan association with the Secretary of State's office?

A. Yes, but not required by statute.

Q. It is required by the Secretary of State, is it?

A. To my knowledge, there has never been a regulation requiring it. It was established procedure for them to be submitted (214) when I took over as Director of the Division, and it has been continued. They are valuable for statistical purposes, and they are most useful for supervisory purposes.

Q. And the balance sheet information is in substance the same, except for a different period, as that contained in Exhibit 30 and 31?

A. Yes.

Q. And in fact, other information summarized in Exhibit 30 and 31 is in substance comparable to the information—I am pointing to the heading "Miscellaneous Information" contained.

A. What is your question?

Q. A lot of the information in that form is the same as contained in the annual reports?

A. If you will confine that question to the balance sheet portion, the answer will be yes.

Q. Well, you describe in your annual report first mortgage loans, the number of first mortgage loans?

A. As at a given date, yes.

Q. As of a given date.

Now, this report shows the new ones that were taken during the month, does it not?

A. Under the "supplemental information" section, yes. It also shows the number of mortgage loans as of the date of the monthly report, which is similar to the contents of the annual report.

(215) Q. . . . Are these voluntary, Mr. Doty, or do you require the associations to file them?

A. I would say they are voluntary, because I have never required them to be filed.

Q. But they have always filed them?

A. Yes.

Q. Every one of them?

A. Yes.

Q. And they filed them because your office requested that they be filed; isn't that right?

(216) A. They have never been requested to send in monthly reports—purely voluntary.

Q. (By Mr. Klein): May I ask, who printed the forms, whose office?

A. They were printed by the Secretary of State's office.

Q. And how did these people get the forms? Did they come in and (217) get them, or did you send them to them?

A. No, we mailed them to them.



Q. And did you have a covering letter with them?

A. Only to the extent that we were enclosing a supply of blank monthly report forms.

Q. And they were just to burn them up, or that you wanted them back?

A. No. You asked me the question had I ever requested, and I said no.

Q. Had your office, as far as you know?

A. Not to my knowledge. There is nothing in the record.

Q. Had your office, sir? Did your office write a letter, or did the Secretary of State's office, in getting these forms to the associations?

A. You mean to get them started in the beginning?

Q. Yes, sir.

A. I have no knowledge of how many years back—certainly long before I was ever connected with the Division—I have no knowledge of how many years prior to my coming there that these monthly reports were furnished the Secretary of State.

Q. Well, in any event, you know that the Secretary of State prints the forms and sends them out to the associations?

A. Yes, I know that.

Q. And you know also that every association has filed monthly reports at least during the period you have been in office?

(218) A. Yes, that's right.

Mr. Klein: Well, your Honor, I would like to get, first I would like to have this marked and offer it as an exhibit.

The Court: Well—

A. (Interposing: How about the ruling, your Honor?

The Court: We will come to that. Is it your thought

the entire matter should go in, or are you directing your real inquiry here to the number of mortgage loans and quantity of mortgage loans made during the month?

Mr. Klein: We also want to show what the financial condition shows on the balance sheet, which is the same form as the report, except we want to have the December 31, 1952 balance sheet, because the Federals are of that date and the bank is of that date and we would like to make a comparison of that date.

The Court: Let me see one that is similar to it.

Mr. Klein: Yes, sir (handing document to the Court.)

The Court: I take it, Mr. Doty, in submitting Exhibit 30, which is the one I have in my hand, was your report to the Governor for the year ending June 30, 1952; you did not feel you were violating the inhibition of Section 7 by providing, on page 20, for instance, the financial statement for the fiscal year ending June 30, (219) 1952, for the Dowagiac Savings & Loan Association?

A.: No, sir, because the annual report was required by statute.

The Court: But you disclose the same information, except for a different period, that was on this monthly report, is that right?

A. Rather similar; this is more detailed. Basically, it contains the same major factors of asset and liability.

The Court: And if the building and loan association officers were subpoenaed in to bring in their books for that particular period, there would be nothing in this law that would prevent them from having to show their books in court, would there?

A. Not to my knowledge, no, sir.

(224) The Court: I appreciate he has a right to be protected by an official ruling on the matter. It is my

ruling that the matter is not privileged, and that if it is there is good reason for his answering, and he is directed to answer, subject, however, to the objection to the materiality and competency of the testimony.

. . . . .

(225) The Court: I want to make that clear; I am not accepting this report as evidence without it being supported by these books, if counsel for the State wishes that.

(226) Mr. Klein: We appreciate that, sir.

Q. (By Mr. Klein, continuing): Now, will you be good enough, Mr. Doty, to go through the list on page 8 and the top of page 9 of these associations and select the monthly report for the month ended December 31, 1952, for each of those state associations?

. . . . .

(234) The Court: . . . As far as the intervening plaintiffs are concerned, the Court may have been in error, but the Court made its ruling they are properly in here, and the cases are joined in (235) one lawsuit.

If I was in error, you could have attempted to appeal by way of special appeal. You may not have had to. You probably can wait until you get up on one appeal, but at least the ruling I made is made and is final until such time as the Supreme Court overrules me.

Now, it seems to me that any proof that properly applies to any plaintiff here will be applied to them. Any other proof that doesn't properly apply to a particular plaintiff will not be applied to them.

For instance, Exhibit 30, there is no particular reason we should say that was received as to Michigan National Bank but not as to the Houghton Bank, which may be one of the plaintiffs in the case. I don't know the names of the plaintiffs. I don't keep them in my mind. I have

heard so many banks first on one side and then the other, I don't even know what my own bank does in this matter, which side they are on.

But I don't ~~see~~ that we run into any serious trouble through any proofs that come in that have to do with the general situation. Anything like the Michigan National that is in competition or not in competition with Capitol Savings and Loan in Lansing, I assume that that won't apply to any bank up in Houghton or Alpena or any place else. But I don't (236) see any reason why we should be upset about it.

It seems to me we are going ahead in an orderly way, and when we get through, we will make it apply properly. Order of proof is a matter of discretion, unless somebody is going to be hurt. How are you going to be hurt? You know where Michigan National has its branches and what their claims are. So I think we will proceed the way we were proceeding.

Q. (By Mr. Klein): Mr. Doty, I will show you Exhibits 36-A through 36-O, inclusive, and ask you if these are the monthly reports for the month ended December 31, 1952, of the various savings and or building and loan associations described on page 8 and on page 9 and 10 of plaintiff's affidavit of merits which are state associations and there indicated in the affidavit of merits?

A. They are.

Mr. Klein: I would like to offer Exhibits 36-A through 36-O, inclusive.

Mr. Dexter: Mr. Klein, what are you offering them as?

Mr. Klein: I have stated it at great length before the Court indicated what his ruling is, and I refer you to the record for those purposes.

The Court: I said I was going to receive these (237) matters, but conditionally only, and as the rule, as I

understand it, is stated in this case in 322 Michigan 276, that the books or records upon which these reports are based must be available to you. They can be offered later, if you insist upon it.

You will have a right to insist upon it, if you wish, and you have the right to cross-examine with reference to those books and records.

Mr. Dexter: Your Honor, the reason I asked this, is plaintiff offering these as summaries prepared by the savings and loan association?

Now, as I understand it, that is what the rule in the Michigan case you refer to is: that a summary can be prepared from voluminous documents and offered in evidence, subject to the right of the opposite party to examine the original records. But is this being offered as a summary prepared by Mr. Doty?

The Court: No.

Mr. Klein: Mr. Doty didn't prepare these. These are signed by officers of the building and loan associations, filed as being true and correct.

Mr. Dexter: I believe, your Honor, that they should be offered in evidence as a summary by the persons who prepared those summaries.

(238). The Court: They are received conditionally. We have to go one step at a time. They are received conditionally, but unless they are connected up properly at the end, why, of course, I will not consider them.

Mr. Klein: We will endeavor to connect them up, sir.

Q. (By Mr. Klein): Mr. Doty, I show you Exhibits 37-A to 37-P, inclusive, and ask you if these are the originals of the annual reports of the same associations described in asking you about Exhibits 36-A, et al., for the years ended June 30, 1952, and June 30, 1953?

A. They are.

(239) Mr. Klein: I should like to offer into evidence Exhibits 37-A through 37-P, inclusive.

The Court: I assume there is the same objection?

Mr. Dexter: Right, your Honor.

The Court: The record may show that all these are received subject to the same objections, so that counsel won't have to state them at length each time, and there will be the same ruling. They will be received conditionally and be connected up later.

Q. (By Mr. Klein): And there are the annual reports which bear the signature of the President and Secretary of each of the associations and the seal and acknowledgment of both?

A. That is correct.

Q. You have been asked to produce your examinations of building and loan associations for the year 1952.

I am not asking him any privileged question yet.

Do you have them with you?

A. Yes.

Q. Is there any reason why you consider them privileged in this suit, sir?

A. Yes.

Q. Well, all right. You do consider them privileged.

Is there any reason why you would object to permitting the Secretary of State to examine them—I mean the Attorney General—but not in our presence, so we don't (240) see them?

A. No, I would have no objection to that.

Q. And would they indicate whether or not there are errors in the annual reports for the years '52 or '53?

A. No, they would not.

Q. But if there were any discrepancies, they would come to light, would they not?

A. Not necessarily so, because the examinations are made at dates throughout the year.



Q. What do your examinations show, without giving me any detail—I don't want the facts. I want to know what do they purpose to show? 9

A. They show a financial statement of condition, a detailed operating statement, a statement of legal reserve, undivided profits, delinquent loans, delinquent contracts, schedule of investments and securities, office building, real estate owned, a statement of the officers and directors and employees and their share holdings and indebtedness, if any.

Q. And what is the purpose of your making these examinations for building and loan associations?

A. Basically to determine the validity of each asset and liability account reflected on their books of record.

Q. Now, in the reports of condition, which have been marked, Exhibit 30 and Exhibit 31 admitted in evidence, and the others pending ruling, these pamphlets are available to the public (241) generally, aren't they?

A. That is true.

Q. The reports of condition?

A. That is right.

Q. And your examinations are made to assure the general public doing business with savings and loan associations and building and loan associations of some supervisory check— • • • as to the value of assets, the soundness of the operation, at least within the provisions of the statute, are they not?

• • • • •

(242) A. In answer to your question as stated, the contents of the question constitute probably the major objective and need for an annual examination.

Q. (By Mr. Klein): And do you know whether or not your form of examination is any different materially from examinations made of banks, as far as you know?

A. Yes. Of course, I don't lay claim to being thoroughly familiar with the report or the examination techniques used in examining banks, but it is my understanding that our examinations of savings and loan associations are substantially more detailed.

(243) Q. (By Mr. Klein): As I understand, Mr. Doty, these examination reports are available for the inspection of the Attorney General during the time of this trial?

A. Yes, sir.

(248) Q. (By Mr. Klein): May I ask you this, Mr. Doty: Do these associations file their charters and by-laws with your office?

A. Yes.

Q. And any amendments would appear there?

A. Yes.

(258) WHITTEMORE, SIDNEY G., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

Q. Mr. Whittemore, you are an officer of the East Lansing Savings and Loan Association?

A. Yes, sir.

Q. And what is your office?

A. President.

Q. How long have you been president, sir?

A. I am not sure when I was president. I was secretary before that, but I don't remember just when it was.

Q. Do you recall what your office was in 1952?

(259) A. I don't remember whether it was secretary or president.

Q. Wasn't it executive vice president?

A. That is possible, yes. I haven't looked it up. Yes, sir, I was executive vice president then in '52. This is the '52 report?

Q. Yes, sir.

A. O.K.

Q. How long do you think you had been executive vice president prior to that time?

A. I don't remember the number of years.

Q. How long have you been employed by the East Lansing Savings and Loan Association?

A. Since September of 1932.

Q. When was it incorporated, sir?

A. In 1919.

Q. Do you have the articles of that association with you?

A. I do, sir.

Q. And the by-laws?

A. Yes, sir. Those are the articles. Here are the by-laws. (handing documents to counsel)

Q. Do you have copies of these?

A. I do not, sir. Those are originals. I have a printed copy of the by-laws.

Q. As amended or prior to the amendment, sir?

(260) A. I thought I had one. Here they are. (handing document to counsel)

Q. You don't have any of the articles?

A. I do not, no.

Q. This document which you say is the charter, does that go back to the date of incorporation?

A. I will have to look to see.

Q. Yes, sir.

A. Yes, sir, it does.

Q. And the by-laws also go back from the beginning, sir?

A. These are when we amended the by-laws, January 1955, when we adopted this amendment here.

Q. The amendment is on top?

A. Yes.

Q. And the rest are the old by-laws?

A. Adopted this January 24, 1952. They were completely rewritten at that time.

Q. And you have a copy of the previous by-laws?

A. Yes, sir, in the office. I do not have them here.

Q. Could you arrange to have them brought up promptly?

A. What do you mean by promptly?

Q. So that we can have them marked and offered in evidence.

A. You asked for '52.

Q. I know, but I am now inquiring as to the old one, sir,

(261) A. It is down at the office.

Mr. Klein: (To the reporter): Would you mark this.

(The Articles of Association was marked Plaintiff's Exhibit 38 by the reporter.)

(The By-Laws, 1952, was marked Plaintiff's Exhibit 39-A by the reporter.)

(Printed booklet of By-laws was marked Plaintiff's Exhibit 39-B by the reporter.)

The Court: Incidentally, Mr. Klein, I did understand the witness from the Secretary of State to testify they have on record over there all these articles of incorporation, do they not, the charters?

Mr. Van Zile: That is what he says, your Honor.

Q. (By Mr. Klein): I will show you a document which has been marked Plaintiff's Exhibit 38, and it consists of 6 pages, and ask you if that is the Articles of Incorporation—Articles of Association of your Building and Loan Association from the date of incorporation on August 4, 1919, with (262) various amendments through to January 24, 1952?

A. Yes, sir.

Q. And have your articles been amended since then, sir?

A. No, this is our last amendment, January '52.

Q. That is the last amendment?

A. Yes.

Mr. Klein: I would like to offer into evidence Plaintiff's Exhibit 38.

Mr. Dexter: No objection, except as to materiality.

The Court: Received.

Q. (By Mr. Klein): I will show you a document which has been marked Plaintiff's Exhibit 39-A, which has ten pages, under the heading "By-laws for Adoption at 1952 Annual Meeting," and then has appended to it on the front page a certificate of amendment to the by-laws, Section 18, dated January 27, 1955, and ask you if they are the by-laws of your corporation as presently constituted?

A. Yes, sir.

Q. And except for Section 18, they were the by-laws as they existed after the annual meeting in January of '52?

A. Yes, sir.

Q. And I will show you a little printed booklet which has been marked Plaintiff's Exhibit 39-B, By-laws of

East Lansing Savings and Loan Association, dated March 17, 1955, and ask you if that is a true and correct copy of Exhibit 39-A, including (263) the amendment of Section 18 to the by-laws?

A. To my knowledge, it is. I haven't read it recently to check it.

Q. So the only difference between the 1952 and the 1955 by-laws are Section 18?

A. That is right.

Mr. Klein: I would like to offer Plaintiff's Exhibit 39-A and 39-B in evidence.

Mr. Dexter: I object to Exhibit 39-A on the question of materiality, and for the further reason that it is the by-laws in effect in the period in question, that is, the year 1952.

(264) The Court: Well, Exhibit 39-A is received. It has been marked. 39-B will not be formally received at this time. It will be re-offered if it appears that it is material in some way. And, Exhibit 39-B, that is the printed copy, including the amendment?

Mr. Klein: It includes the amendment, and I am perfectly willing, sir, if we substituted for this 39-A the one that was in effect in 1952.

The Court: It may be received for purposes of convenience anyway, as a printed copy.

Mr. Klein: That is the only reason for it.

The Court: So the objection to 39-A is apparently good. If it becomes material you may re-offer it. I do not see how an amendment in 1955 could be very material.

(265) Q. (By Mr. Klein, continuing): Could you produce, or have produced, the previous by-laws of your association from the date of incorporation to date?



A. I might have to look and see if they are there. I haven't checked that file for some time. I just picked these up for 1952.

Q. You think they are there, don't you?

A. As far as I know, they are.

Q. Yes. And could you return with them when court reconvenes, because I think you will be on the witness stand?

A. What time are you going to reconvene?

The Court: 1:30.

A. I can be here.

Q. Yes, sir. Thank you. Now, in connection with your duties as executive vice-president in 1952, just what were your duties, sir, as executive vice-president?

A. The operation of the Association.

Q. You were in charge of the operation of the Association?

A. That is correct.

Q. And you directed the entire operation, sir?

A. With the help of assistants.

Q. With the help of assistants?

A. That is right.

Q. And you were the officer who formulated policies as to mortgage (266) loans?

A. The policies were set by the Board of Directors.

Q. Well, you were the chief executive officer in carrying out those policies?

A. That is correct.

Q. And the same in respect to savings accounts?

A. Yes.

Q. And you were in charge, overall charge, at least, and directly responsible for the keeping of the books and records of the Association?

A. Yes, sir.

Q. Including the financial records?

A. Yes, sir.

Q. And the making of reports to the Secretary of State?

A. Yes, sir.

Q. . . . I will show you documents which have been marked Exhibit 37-D and 37-D-1, respectively, and ask you if these documents are the original annual reports of the East Lansing Savings & Loan Association filed with the Secretary of State of Michigan for the fiscal years ended June 30, 1953, and June 30, 1952, respectively?

A. Exhibit 37-D-1 looks like it is all there, but 37-D does not look like all of it is here.

Q. What is missing, sir?

(267) Well, I was looking for one particular sheet and it isn't here. The one I am looking for is because it is a confidential sheet about our directors, and so forth, because I feel it is only our business and the State's; that is in one and isn't in the other.

Q. Except for that, those are the reports you filed with the Secretary of State?

A. That is correct.

Q. And were each of these reports prepared by the East Lansing Savings & Loan Association in the regular course of its business, and was it in the regular course of such business to make such reports to the Secretary of State?

A. Yes, sir.

Q. And each of these reports contain your signature as vice-president, do they not?

A. Yes, sir.

Q. And were they prepared from and based upon entries made in the books and records of the East Lansing Savings & Loan Association?

A. Yes, sir.

Q. And in each instance, referring to Exhibit 37-D and 37-D-1, did you, in making the reports, certify and swear that to the best of your knowledge and belief the books and records of said association correctly reflect the true financial condition thereof?

(268) A. Yes, sir.

Q. And the statements of schedules and data contained therein are true and correct?

A. Yes, sir.

Q. And the signatures appearing on all notes, mortgages and other instruments in connection therewith, are genuine?

A. Yes, sir.

Q. And that there are no undisclosed assets or liabilities?

A. Yes, sir.

Q. And you also sent copies of these reports to the Federal Home Loan Bank in Indianapolis, did you not?

A. Yes, sir.

Q. Do these reports truly and correctly reflect the entries and records of transactions recorded on the books and records of the East Lansing Savings & Loan Association for the periods in question referred to by Exhibit 37-D and Exhibit 37-D-1?

A. Yes, sir.

Q. Do you have the original books and records of the Association from which these reports were made, and upon which they were based?

A. Yes, sir.

Q. And would you be good enough to make them available for the inspection and examination of the Assistant Attorney General, or his office, in connection with this litigation?

(269) A. I have no objection.

. . . . .

(272) Q. Mr. Whittemore, showing you Exhibit 36-E, which has been identified as the monthly report of the East Lansing Savings & Loan Association for the month ended December 31, 1952, would you tell us whether that report was prepared in the usual and ordinary course of business and regularly made out in the usual and ordinary course of business?

A. Yes, sir.

Q. It was filed with the Secretary of State in accordance with your direction as chief executive officer?

A. Yes, sir.

Q. And does it truly and correctly reflect the entries appearing on the books and records of the association for the period in question?

A. Yes, sir.

(273) Q. And it there shows, does it not, the number of new mortgages taken for the month of December, does it?

A. Yes.

Q. And those were mortgages taken by the association, and the amounts, and so forth?

A. Yes.

Mr. Klein: I'm not sure exactly of the ruling, but so there will be no misunderstanding, your Honor, I would like to make certain, and I again offer, if they hadn't been—I think they are in evidence, but again, to make sure, I want to offer 37-D, 37-D-1, and 36-E. I think your Honor ruled they were admissible subject to being verified by the witness from the association.

The Court: I think that was the idea, and, of course, subject also to the right of the Attorney General to inspect the books if he desires.

Mr. Klein: So as I understand it, these exhibits are admitted subject to those conditions in each case.

The Court: They are admitted.

Mr. Dexter: Your Honor, as I understand, it was subject to the right of the Attorney General to insist upon the best evidence rule and to go to these places of business with the Court for examination.

The Court: That's right. If you wish, we will go there and have the books marked as exhibits in the case.

. . . . .

(276) Q. (By Mr. Klein): Mr. Whittemore, when the East Lansing Savings & Loan Association was incorporated, it originally had a capital of \$12,650, did it not?

A. At the original time?

Q. Yes, sir.

A. Yes, sir; that is what we show there.

Mr. Dexter: Your Honor, I am wondering whether or not this evidence in terms of the condition of the East Lansing Savings & Loan in 1919 is material to this lawsuit.

Now, if we are going to go into all the activities of these associations from the time of their incorporation, we are going to have a record much more voluminous than I believe (277) is proper.

The Court: Well, I assume counsel won't want to try to put in the annual reports for each of the years—

Mr. Klein (interposing): No.

The Court (continuing): —but in view of what has been said by Judge Taft and some of the other judges that have expressed their views on building and loans back in the earlier years, it seems to me it is competent to endeavor to show, if he can, what was said at that time, and based presumably upon the facts as they existed at that time, may not be conclusive today.

So you may proceed.

Q. (By Mr. Klein): Was the original capital subscribed by investment shares, sir?

A. To my knowledge, yes.

Q. And how is the other capital, the additional capital, or how was it subscribed—by additional investment shares?

A. By additional investment shares, yes.

Q. And what evidence of share ownership did a shareholder get in 1952 of his investment in shares?

A. A passbook with a certificate.

Q. Do you have a form of such?

A. I had quite a time finding it. I had to borrow somebody's old book to get it.

Q. (By Mr. Klein): I will show you a booklet, which is marked Exhibit 40, and ask you if that is a form of investment shares account?

A. Yes, sir.

Q. Of the East Lansing Savings Bank & Loan in effect in 1952?

A. Of the East Lansing Savings & Loan.

Q. Yes, Savings & Loan. You said yes, it was?

A. Yes.

Q. And on the outside cover I see it says "Savings Account No.?"

A. Yes.

Q. And then the name of the person who is the account owner?

A. Yes.

Q. And then in the first page is what is called an Optional Savings Share Certificate; is that correct, sir?

A. Yes.



Q. And then in the inside pages are the amounts invested, and also showing the repurchases in this case?

A. Yes.

Mr. Klein: I should like to offer Exhibit 40 into evidence.

Mr. Dexter: ~~No~~ objection, except the continuing one of immateriality.

The Court: It may be received.

Q. (By Mr. Klein): What do you mean by optional share investments, (279) sir?

A. That is the name of the investment.

Q. Well, what is the nature of it, please?

A. Well, they can save systematically or at their option.

Q. No fixed requirement?

A. That is correct.

Q. And were there any other methods of investment in '52?

A. Fully paid.

Q. Fully paid. What do you mean by that—one payment?

A. No. That would be multiples of a hundred dollars.

Q. But paid at one time?

A. They could add to it.

Q. Add to it each time?

A. They could add to it, but it would have to be in multiples of a hundred.

Q. And the certificate was issued in that connection?

A. That is correct.

Q. Do you have that kind of a certificate?

A. Yes, sir.

Q. This was the book in effect in '52, was it?

A. That's right, yes, sir.

. . . . .

(280) (By Mr. Klein): I show you a book marked Exhibit 41 and ask you if it is the account investment book used in 1952 by the association for fully paid shares?

A. Yes.

Mr. Klein: I offer Exhibit 41 in evidence.

The Court: Witness, do I understand there is one document? That is, the book has the certificate in it?

A. Yes, sir.

The Court: There is not a separate certificate?

A. No. It is in the front of the book.

Mr. Dexter: The only entry in this book is one in 1955, but is this the same book?

A. It is the same book we used, yes. It is the only one I could find. We had quite a few, but when we just moved over into our new quarters, we threw all the old stuff away.

Mr. Dexter: No objection except the continuing one.

The Court: It may be received.

Q. (By Mr. Klein): Were there any other types of investment certificates—investment shares?

A. No, sir.

Q. And do I correctly understand by an investment in the association in 1952, an investor was not guaranteed any fixed rate of interest?

A. That's correct.

Q. In fact, he wasn't guaranteed any interest, was he?

(280½) A. We don't guarantee them.

Q. What was that, sir?

A. We don't guarantee them.

(281) Q. There is no contract to pay any interest?

A. No.

Q. And if I correctly understand, the investor in shares such as are described in Exhibits 40 and 41 was a stockholder of the corporation?

A. He was a shareholder.

Mr. Dexter: I object.

A. He is a shareholder.

Q. And he took the risk of loss and the risk of making a profit of the corporation; is that correct, sir?

A. Yes, I believe that would be right.

Q. And what was the dividend rate paid in 1952 on shares?

A. I don't know. I didn't look it up.

Q. Well, I will show you Exhibit 37-D, page 8, and ask you if it does not appear that the dividend rate for the period ended June 30, 1952, for that six months was 3% on the shares?

A. Yes, sir.

Q. And how long had the rate been 3% prior to that time?

A. I wouldn't be able to tell you, sir.

Q. And what is the rate today, sir?

A. Current rate is 3½%.

Q. And approximately how many shareholders did you have as of December 31, 1952?

A. I don't know, sir.

(282) Q. Well, would you be able to tell what it was in June 30, 1953, or June 30, 1952, by looking over this report?

. . . . .

A. According to this report, there is 2,054.

Q. As of what time was that, sir?

A. June 30, '53.

Q. And June 30, '52 they were 1,588?

(283) A. Yes, sir.

Q. And as at December 31, 1952, referring to Exhibit 36-E, there was an aggregate amount of investment by shareholders of \$3,647,226.59?

A. Yes, sir.

Q. Was it possible for anyone in '52 to become a shareholder in your association?

A. Yes, sir.

Q. Was there any limit to the amount any shareholder could invest with your association in 1952?

A. No, sir.

Q. Was there any limit prior to '52 that you know about?

A. No, sir, not that I know of.

Q. When a person became a shareholder, he became a member, did he?

A. That is right.

Q. And that membership gave him a right to vote?

A. Yes, sir.

Q. But with limitations?

A. Yes, sir.

Q. What were the limitations, sir?

A. He couldn't vote over 20 votes.

Q. Couldn't vote over 20 votes for the management; is that right?

A. Could not vote over 20 votes at the annual meeting.

(284) Q. And what other obligations, if any, were there, or rights were there as a shareholder—

A. (Interposing): All rights to share in the earnings.

Q. A right to share in the earnings?

A. That is right.

Q. And take the risk of the losses; is that correct, sir?

A. If there would be any, but we build a reserve so there won't be, we hope.

Q. You hope?

A. That is right.

Q. Now, there is no requirement that a shareholder become a borrower?

A. No, sir.

Q. And there was no requirement in 1952 that a borrower become a shareholder, was there?

A. No, sir.

Q. Now, what economic classes income wise and wealth wise were your investors in 1952?

A. I would not know.

Q. Were they from the poorer classes solely?

A. I don't know their financial status.

Mr. Dexter: I object to—

Q. What was the largest accounts you had in '52?

A. I am sorry, I wouldn't know.

Q. Did you have investors who were trustees?

(285) A. Possible. I don't know. I would have to look the record over to see.

Q. Could you ascertain that?

A. Yes, some other time.

Q. Did you have investors who were business people?

A. Yes.

Q. Did you have investors that were organizations seeking investment?

Mr. Dexter: Your Honor, I believe that this line of questioning, even though building and loans under our general objection could be considered subject of relevant inquiry, that this line of questioning is completely extraneous and immaterial.

The Court. Objection overruled.

Q. (By Mr. Klein): I see in a brochure you put out, your association, that you seek investment accounts for your shares.

A. Yes, sir.

Q. What do you mean by investment accounts?

A. Fully paid shares, sir.

Q. Fully paid shares and without limitation as to amounts?

A. That is correct.

Q. You have any number of investments in excess of \$10,000, don't you?

A. Yes, sir.

Q. And you are anxious to get as large a number of substantial (286) investments of that kind as you can get, aren't you?

A. Yes, sir.

Q. Do you have any notion as to the average amount of your investment shares?

A. I do not, sir.

Q. And you don't know what it was in '52?

A. No, sir.

Q. And I also see that in your literature you seek out organizational accounts for investment, and so forth?

A. Yes, sir.

(287) Q. (By Mr. Klein): And in 1952 your organization advertised extensively, did you not?

A. Yes, sir.

Q. And you advertised in the newspapers?

A. Yes, sir.

Q. You advertised by radio?

A. Yes, sir.

Q. Television?

A. Yes, sir.



Q. And by direct mail advertising?

A. Yes, sir.

Q. And in 1952 you tried to get as many investors in your shares and for the largest amounts that you could, didn't you?

A. Yes, sir.

Q. And you did so because the more that was invested in your shares the more would be available for the mortgage and other ends of your business?

A. Yes, sir.

Q. Now, looking through your reports, Exhibit 37-D and D-1, would it be fair to say that a major portion of the assets of the association were employed by making loans to people secured by mortgages?

A. Yes, sir.

Q. What portion approximately of your assets were employed in this (288) manner in 1952?

A. I don't know the exact amount.

Q. Well, I will show you your balance sheet as of December 31, 1952.

A. The bigger share of it. That is the only purpose we are in business, is to take savings and make mortgage loans. That is what we are given a charter for.

Q. But there was no requirement or policy in '52 of your association that the people who invested the shares would take the mortgage loans?

A. No.

Q. And there was no requirement that the people who borrowed money on mortgage loans would be investors; is that correct, sir?

A. That is correct. I would like to make one statement, however, that any borrower has to be a member under the law.

Q. Let's get into that, since you mention it.

A. All right.

Q. You advertise, do you not, for borrowers throughout this locality?

A. Yes, sir.

Q. What locality did you operate it in 1952?

A. East Lansing and surrounding areas.

Q. And you advertised in the newspapers to get people to borrow money from your savings and loan association?

(289) A. Yes, sir.

Q. You did not merely go to people who were then members?

A. No, sir.

Q. You went to people who were not members to see if they would borrow money from your institution?

A. They came to me after advertising; they came to me.

Q. They came to you?

A. Yes, sir.

Q. And then they came to you and they made an application for a loan?

A. Yes, sir.

Q. Do you have an application form, sir?

A. Yes, sir.

Q. Was this the one used in '52, sir?

A. Yes, sir.

. . . . .

Q. I show you a 4-page printed form marked Plaintiff's Exhibit 42, headed, "Application for Mortgage Loan, East Lansing Savings and Loan Association," and ask you if that is the application form used in 1952 by your association in respect to loan applications?

A. Yes, sir.

Mr. Klein: I would like to offer Plaintiff's (290) Exhibit 42 in evidence.

Mr. Dexter: No objection, except our continuing one.

The Court: Received.

Q. (By Mr. Klein): Now, looking at Plaintiff's Exhibit 42, the association got the name of the applicant, the wife, the address, the name of the employer, number of dependents, place where employed, the number of years employed, and the financial statement, did they not, sir?

A. Yes, sir.

Q. You then had marked the amount the applicant wished to borrow?

A. Yes, sir.

Q. You also had a provision in here where he indicated what his annual income was?

A. Yes, sir.

Q. And what his annual charges against income were?

A. That is right.

Q. And then you had a place on the second page for a description of the property, and whether it is proposed construction, under construction, or existing construction?

A. Yes, sir.

Q. And then the third page refers to title conditions, about how it is being purchased or how it is owned, and then there is a place for the report of appraisers?

(291) A. Yes, sir.

Q. Now, what procedure just generally would you follow when an applicant came to your association in 1952 for a loan?

A. Fill out the application blank, sign it, and then it goes to the appraisal committee. They have the power

to grant the loan, and at the monthly meeting of the board it is presented to the board for their approval.

Q. You send out appraisers to appraise the property, would you not?

A. Yes, sir.

Q. And then you also consider the net worth of the applicant and his earnings and his potential net income available?

A. Yes, sir.

Q. You wanted to make sure that you had good mortgage security as well as personal financial security?

A. Yes, sir.

Q. And at what basis of valuation did you take loans, did you require as a minimum?

A. I don't quite understand your question.

Q. In other words, if a man wanted to get a mortgage loan of \$10,000, what value would be required to be on his property in order to get a \$10,000 loan?

A. Let's put it this way, that the law requires that we cannot loan more than 75% of our appraisal.

Q. In '52 was that?

(292) A. Yes, sir.

Q. What was the policy of your association at that time?

A. As far as I know, it was the 75% maximum.

Q. And what was the average amount of appraisal you used in '52?

A. I don't remember that, sir.

Q. It was less than 75, wasn't it?

A. I don't remember that, sir.

Q. You didn't always loan the maximum, did you?

A. No, sir. That is the maximum we can go to under the law.

Q. And conservative and careful management would have dictated that you go below the maximum limits?

A. We quite often do, sir.

Q. I am talking about '52.

A. We probably did.

Q. And you undoubtedly did?

A. Probably did.

Q. Would it be a fair statement to say that your average is between 60 and 65% in loan value?

A. I don't know, sir.

Q. You wouldn't say that was incorrect?

A. No.

Q. Now, until the point that an applicant got a clearance from your association, he was not necessarily a member?

A. No.

Q. In fact, for the most part, such applicants were not members, (293) were they?

A. No.

Q. The loan application might be rejected.

A. That is correct.

Q. Rejected for what reason, sir?

A. Either credit report wasn't correct, or else they wanted more than we could loan them.

Q. And were the loan applications and the basis of the loans followed by your association in '52 substantially different from the bank form applications in making similar loans?

A. I don't know. I didn't see any bank applications.

(294) Q. Did you ever make any loans in 1952 on commercial properties?

A. Not to my knowledge.

Q. You wouldn't say that you didn't, though?

A. No; not to my knowledge.

Q. But for the most part your loans were on residential properties?

A. That is correct.

Q. And do you know what the average amount of your loans were in 1952?

A. I do not.

Q. Well, when the loan was approved, was the applicant required to become a member of the association?

A. Yes, sir.

Q. And what did he sign that indicated that he was a member of the association?

A. He signed a signature card.

Q. Do you have such a signature card here?

A. I don't, no, sir.

Q. Could you have one produced and sent here?

A. That wasn't listed.

Q. I know it, sir.

A. But I could have it sent down to you.

Q. Yes, sir. And, what requirement was there imposed on a borrower when he became a member; what burden, if any?

A. I don't quite see what you mean.

(295) Q. Did he have any liability, any obligations, any duties as a member?

A. Only in so far as he had a loan, he had to pay the loan back.

Q. He had to pay the loan back?

A. Certainly.

Q. He would sign a mortgage note and he would sign a mortgage securing the mortgage note?

A. Yes, sir.

Q. And other than that, he had no other obligation as a member borrower, or otherwise?

A. He was entitled to a vote at the annual meeting.

Q. He was entitled to one vote?

A. Yes, sir; that is by law.

Q. But other than that, he had no obligation?

A. No, not to my knowledge.

Q. Now, would you say that the East Lansing Building & Loan Association was adapted from the old English society of savings plans, savings and loan associations?

A. I don't know.

Mr. Dexter: You Honor, I would say that that question is quite immaterial.

Mr. Klein: Well, I think it bears on the history of this.

The Court: I don't know. Maybe we have got to find out what the old English system was.

(296) Mr. Klein: We will show it to you, your Honor.

The Court: Well, I wonder if that is competent.

Q. (By Mr. Klein, continuing): Well, was it based upon the early type of loan association initiated in the United States in 1831 by small community groups, as a means of combining their savings on a safe and profitable plan, and also to make funds accessible to members of their own group?

A. You are reading our brochure, which is a history of savings and loans in the United States, a short history.

Q. Yes. That was the original type of the building and loan association, wasn't it?

A. That is right.

Q. And then later funds were made available to others than members in the community for long-term home financing?

A. No, I wouldn't say that; they were members; when they have a loan, they are a member.

Q. But they were not members until they applied for loans, and they do not invest in the corporation?



A. That is under the state law that the legislature passed.

Q. I am asking you a question. They do not invest, and they are not required to invest in the association?

A. No, sir.

Q. And they are not members until the time their borrowings become effective?

A. That is correct.

(297) Q. Now, I suppose in the operation of your business, sir, you have occasion to read a lot of different publications issued by savings and loan associations?

A. Yes, sir.

Q. And do you read The Savings and Loan News, sir?

A. Some parts of it.

Q. And have you ever heard of Mr. Norman Strunk, executive vice-president of the Union U. S. Savings and Loan League?

Mr. Dexter: Your Honor, I object to magazine references in this lawsuit. I do not think it is competent evidence.

The Court: We will see when we get to it. Right now he wants to know if he knows Mr. Strunk. That cannot hurt anybody—I hope.

A. Yes, sir.

Q. (By Mr. Klein, continuing): And you know he has written extensively on building and savings and loan associations?

A. Yes, sir.

Q. And as executive vice-president, and now president of this East Lansing, Association, I suppose you knew pretty much the general nature and character of operations of building and loan associations throughout the State of Michigan?

A. I know how ours is operated.

Q. And in that connection, is your association a member of the (298) U. S. Savings and Loan League?

A. Yes, sir.

Q. And how long have you been a member of that Savings and Loan League?

A. I don't know, sir.

Q. Were you a member in 1952?

A. Yes, sir.

Q. And had been for some time before, hadn't you?

A. To my knowledge, yes.

Q. (By Mr. Klein, continuing): From your knowledge as operating building and loan associations and savings and loan associations, being a member of the U. S. Savings and Loan League, would you have any opinion as to the correctness of a statement appearing by Mr. Strunk in the April 1954 Savings (299) and Loan—

Q. (By Mr. Klein, continuing): —that investors in savings and loan associations have a slightly higher income than those which typically use banks for savings?

The Court: You may answer the question yes or no; do you have an opinion?

A. I do not have an opinion on that article, no.

Q. (By Mr. Klein, continuing): I am asking you on the facts, not on the article?

A. I thought you asked about the article.

Q. (By Mr. Klein, continuing): Do you have an opinion, sir, from your long experience in the savings and loan business as to whether or not the income of

your investment shareholders in 1952 were higher, equal or lower than savings depositors in (300) banks?

A. I would say higher.

Q. Would you have an opinion as to the income or economic strata of borrowers from savings and loan institutions, as compared with mortgage borrowers from banks?

A. I wouldn't.

Q. You don't—

A. No.

Q. You have no opinion?

A. No, sir.

Q. Your association sought loans from all economic classes?

A. Yes, sir.

(301) (By Mr. Klein, continuing): Upon what did you base that opinion, Mr. Witness?

A. Which opinion is that, sir?

Q. That investors in savings and loan associations were in a higher economic bracket than depositors in banks?

A. That is not what I said. I said the income on our investments were higher than they were on the savings accounts (302) in the bank. I didn't say what their income was, I don't know. I know what we paid them.

Mr. Dexter: Your question then wasn't related to the economic condition of the particular individual?

A. I thought he meant whether we paid a higher rate than the bank; that is what I thought he meant.

The Court: If the witness understood it that way, he understood it differently than I did; so apparently he has got it clarified now.

Q. (By Mr. Klein, continuing): Do you have investors who are professional people?

A. Yes, sir.

Q. Business people?

A. Yes, sir.

Q. Executives?

A. Yes, sir.

Q. Trustees and executors of estates?

A. We have trust accounts, I don't know about trustees.

Q. Corporations?

A. I don't know; I would have to look my records over to see; I don't know.

Q. Business firms?

A. I would have to check my records, sir.

Q. Institutions, like educational institutions?

A. No, sir.

(303) Q. Societies of different kinds investing funds?

A. I don't know what you mean by "societies."

Q. Well, any organization, churches?

A. Yes.

Q. Charitable organizations?

A. If you talk about churches, yes.

Q. Charitable organizations?

A. I don't know about charitable.

Q. Cemetery organizations?

A. Not any cemetery organizations, I know that.

Q. Your organization sought investors from all classes, anyone who would invest, isn't that correct?

A. Yes, sir, that is correct.

Q. Well, you have lived in East Lansing a long time, haven't you, sir?

A. Yes, sir.

Q. And as an officer of your organization a long time, you would pretty much know in what economic level your shareholders would be, wouldn't you?

A. No, sir.

Q. You don't know your shareholders?

A. No, I don't know what their incomes are.

Q. Are they in the poor people class level, moderate, well-to-do?

A. Probably we have some from all classes.

(304) Q. Probably?

A. Probably; I would have to check to find out. I wouldn't go and check their financial statements; I don't know them.

Q. And you are trying to seek as many and as large accounts as you can get?

A. Yes, sir.

Q. What types of mortgages did you take in 1952?

A. Mortgage loans on homes.

Q. On homes?

A. Yes, sir.

Q. And you gave F. H. A. mortgages?

A. No, sir.

Q. You never had F. H. A. mortgages?

A. I never have, no, sir.

Q. Your institution?

A. No, sir.

Q. And did you have veterans' mortgages?

A. I don't know if I made any in 1952, but I made some, I have some in the file, but whether they were made in 1952, I don't know.

Q. I will show you this report.

A. They might have been made in 1952.

Q. (Handing document to the witness.)

A. This shows the total loans; it doesn't show what was paid that year, does it?

(305) Q. Well, V. A. guaranty?

A. That is the number in the folio; it doesn't show in that year.

Q. Were you making those loans?

A. I don't remember whether I did in 1952 or not.

Q. You made them before?

A. Yes, sir.

Q. Did you adopt any policy to stop them?

A. We just discontinued.

Q. When did you adopt that policy?

A. I couldn't tell you; I don't know.

Q. Did you also make conventional mortgages?

A. Yes, sir.

Q. And what was the average duration of those mortgages?

A. Well, most of them are written for around, all the way from ten to twenty years.

Q. What was the average duration?

A. I don't know.

Q. And they were amortized monthly?

A. Monthly.

Q. Equal amounts monthly?

A. Yes, sir, set up on a monthly payment basis.

Q. And who were your competitors on mortgage loans in 1952?

Mr. Dexter: I object to that question, your Honor. That is the ultimate question at issue.

(306) The Court: Well, I am not sure whether it is or not. I think probably you had better define the word "competitor" to see if we are all talking about the same thing here.

Q. (By Mr. Klein, continuing): Well, what other organizations in Lansing in 1952 were also out seeking mortgage loan business secured by residential mortgages?

A. Insurance companies, banks.

(307) Q. Was the Michigan National Bank out seeking mortgage loan business in '52 secured by residential mortgages?

A. Yes, according to the advertising which I saw.

Q. According to their advertising. And being in the business, you would be pretty aware who is out seeking that type of business, since that was the principal phase of your business, wasn't it?

A. Yes, sir.

Q. And was the Michigan National Bank a sharp competitor for that type of business in 1952?

A. I don't know what they wrote.

Q. Didn't you make yourself aware of the type of mortgage loans they made?

A. They made mortgage loans. What type, I don't know.

Q. Secured by residential mortgages?

A. I don't know what kind they were.

Q. You knew they made FHA loans, didn't you, in 1952?

A. The reports came back to me they did.

Q. They did?

A. According to the reports, they did.

Q. And they made Veterans guaranteed loans, did they not?

A. From my report.

. . . . .

(309) Q. (By Mr. Klein): Looking at page 5 of Exhibit 37-D, your annual report ended June 30, 1952, and page 11 of Exhibit 37-D-1—one is 37-D and 37-D-1—there is an analysis on those pages of the mortgage loans made by your association during each of those fiscal years?

A. Yes, sir.



Q. Is that correct?

A. Yes, sir.

Q. And it shows in the one case you made mortgage loans in excess of \$1,300,000?

A. Yes, sir.

Q. And in the other case in excess of \$1,285,000?

A. Yes, sir.

Q. And in each case it is indicated that some of the loans were for construction; is that correct, sir?

A. Yes, sir.

Q. Some for the purchase of homes?

A. Yes, sir.

Q. Some for refinancing of mortgage loans by another lender?

A. Yes, sir.

Q. And some for additions, alterations, repairing and reconditioning?

A. Yes, sir.

Q. And then you have a substantial amount of loans for all other purposes. What would they be?

(310) A. They were loans that didn't fall in these particular categories.

Q. Well, what were the other purposes—money borrowed for private use?

A. I would have to look up the records on it. I don't know.

Q. Well, could it be in that class?

A. I don't know.

Q. Did you make loans for that purpose?

A. I wouldn't want to say what it is for until I looked up my record.

Q. Did you ever make a loan for other than building or refinancing purposes? What other purposes could fall within that category "Loans for all other Purposes"?

A. I would have to look it up.

Q. What does that mean, sir? You had this signed. In fact, you signed it, didn't you?

A. I would have to look at the loan to find out what the classification was, sir.

Q. (By Mr. Klein): You don't know of your knowledge of any purpose other than what is here?

A. I would have to look at my record to find out what the purpose (311) was.

Q. We are not asking you on a specific loan. I am asking you what would be the character of the purpose?

A. There might be several.

Q. And what would the several be?

A. I can't make that statement until I see the card.

Q. Not tied in to any amount here, what would be the purpose for which you would make loans other than the first four purposes?

A. I'm sure I can't say until I can look at the records and see what the loans were for?

Q. You do operate the business?

A. Absolutely.

Q. And you know you made loans for other than construction, purchase of homes, refinancing and alterations; is that correct, sir?

A. But I would have to look up the record, because I don't divide that up under those classes. My bookkeeper does that, and I would have to go check the record to find out.

Q. Can you do that and come back and advise the Court what the purposes were, or do you think you can refresh your memory now in general what they were?

A. I don't know. I can't tell you if I don't know.

Q. You also engaged in the business, did you not, sir, of Traveler's Checks and money orders in 1952?

(312) A. Yes, sir.

Q. And were there any other businesses you were engaged in at that time?

A. Not to my knowledge.

Q. Any other functions you served?

A. Not that I know of.

. . . . .

Q. (By Mr. Klein): I will show you a photograph that is marked Plaintiff's Exhibit 43 and ask you if that is your present East Lansing Savings Bank banking office?

A. That is our present East Lansing Savings & Loan office and not a banking office. It is a savings and loan office.

Q. And who helped fixture the interior of that office?

Mr. Dexter: Your Honor, I think that is quite immaterial.

Q. (By Mr. Klein): Is this a correct picture—I am showing you a pamphlet of the interior of it.

A. That is correct.

Q. And it is set up with counters like a bank, isn't it?

A. It is set up with counters.

Q. Like a bank?

A. They are savings and loan counters.

Q. In fact, a banking installation firm installed that for you, didn't they?

(313) A. They do banks and savings and loan both.

Q. They do both?

A. Yes, sir.

Q. And it has the appearance of a bank, does it not?

A. It has the appearance of a savings and loan.

. . . . .

Mr. Dexter: Your testimony wasn't in reference to  
'521

A. No. He is asking me if that is our present office.

Q. (By Mr. Klein): I will show you page 3 of Exhibit 43-A and ask you if that is a picture of your present interior—and I said “present” in each case—of your savings and loan (314) office?

A. Yes, sir.

Q. When was this office built, sir?

A. We just had an open house last week.

Q. Last week?

A. Yes, sir.

Q. And also in this book, 43-A, on the second page there is a picture of your office as it was in 1939: Was that to date?

A. That's correct.

Mr. Klein: I should like to offer Plaintiff's Exhibit 43 and 43-A, the booklet, into evidence, and the booklet I am only offering for the purpose of the pictures, and nothing else.

Mr. Dexter: I would, of course, object because they pertain to a period subsequent to the date of this lawsuit, and plaintiff has not eliminated the other parts of the exhibit that he marks 43-A, so obviously he can't just offer part of it by offering it all. I will object that this is subsequent to the period in question, completely immaterial.

The Court: Well, Exhibit 43 is not received. Objection sustained. The picture of the interior of the present office is not received.

Now, if there is a picture of the building in '39 that can be some way separated, I would accept it for what it shows or what it is worth.

Mr. Klein: Your Honor, may I offer these exhibits as part of a separate record, sir?

The Court: You may.

Q. (By Mr. Klein): Are you generally familiar with the information and data appearing in the Savings & Loan Fact Book of 1957 of the United Savings & Loan League, having a lot of statistics for the periods of '52 and prior—1952 and prior?

A. I don't have knowledge. I have looked at it, that is all.

Q. Have you read them?

A. No, sir.

Q. You do not read them?

A. I haven't read them all.

(316) Mr. Dexter: Your Honor, we might back up a minute.

In reference to these exhibits, there was quite a bit of testimony presented by the witness in reference to those, and I assume that that should be stricken from the record along with the exhibits.

The Court: I think there was some as to who furnished the fixtures, something of that sort. It may go to a separate record. It is not received in evidence.

Mr. Klein: I don't know if I have offered Exhibit 42, your Honor. I don't think I did, and I would like to offer it. That is the application for mortgage loans.

The Court: I have got it marked received, so I think you did. At any rate, it is received.

Q. (By Mr. Klein): Did you bring any of the advertising data we asked you to bring?

A. Advertising data for '52 I do not have.

Q. You do not have any?

A. No.

Q. Do you have any that you use now that is similar to that you used in '52?

A. It wasn't subpoenaed.

Q. I asked you for '52, I appreciate that.

A. That's right.

Q. Do you presently have any?

A. Yes, we have advertising.

Q. And is it similar in character to that you used in '52?

A. I don't remember now what we used in '52.

Q. You don't remember?

A. No, sir.

. . . . .

(326) WRIGHT, BERT D., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

*Direct Examination*

By Mr Klein:

. . . . .

Q. And you are a resident of Port Huron, sir?

A. Yes, sir.

Q. What is your present occupation, Mr. Wright?

A. Executive vice president of Citizen's Federal Savings and Loan Association.

Q. And how long have you been employed by the association?

A. Practically 20 years.

Q. You say you are executive vice president?

A. Yes, sir.

Q. And how long have you been executive vice president?

A. About ten years.

Q. And prior to that?

A. Secretary.

Q. And you are a shareholder of the association?

A. I have a savings account with the association, yes, sir.

Q. And that makes you a shareholder?

A. Well, they call it shareholder. It is a savings account.

(327) Q. You are not a depositor, you are not a creditor of the association?

A. No, sir.

Q. And you share in the risks of gain or profit?

A. On our savings account, I receive a dividend, yes, sir.

Q. And what were your duties in 1952 with the association?

A. Executive vice president.

Q. Just what were those duties?

A. Being, you might say, general manager.

Q. In other words, you were the chief executive officer?

A. Yes, sir.

Q. And your association was incorporated in what year, did you say?

A. 1938.

Q. Do you have a copy of your articles and by-laws?

A. This is our present charter and by-laws.

Q. Has it been amended?

A. Yes, sir. It has been changed. This is the original charter.

Q. This is the original charter?

A. Yes, sir.

Q. And the white one, when was that changed, sir?

A. December 23, 1949.



Q. I show you a printed booklet marked Charter and By-laws of the Citizen's Federal Savings and Loan Association of Port Huron, which has been marked Exhibit 44, and ask you if that was a true and correct copy of your original charter and by-laws up until December 23, 1949?

A. Yes, sir.

Q. And I show you a booklet which has been marked Exhibit 44-A and ask you if that is a true and correct copy of your charter and by-laws since December 23, 1949?

A. Yes, sir.

Q. And they were in effect in '52?

A. Yes, sir. This white one?

Q. Yes, sir.

A. Yes, sir.

Mr. Klein: I would like to offer Exhibit 44 and Exhibit 44-A in evidence.

Mr. Dexter: I object to both exhibits as being immaterial, and I particularly refer to—call the Court's attention to Exhibit 44, which was not the by-laws in existence—they were prior; they are not after '52. They are prior to '52.

Mr. Klein: Yes, sir.

The Court: You don't object because they are (329) printed copies?

Mr. Dexter: No.

The Court: They may be received.

Q. (By Mr. Klein): Do you have, sir, a published balance sheet of your association for the year 1952 and prior years? Certain prior years that we asked for?

(Published statements of financial condition of Citizen's Federal Savings and Loan Association were marked Plaintiff's Exhibit Nos. 45-A through 45-F by the reporter.)

Q. Now, Mr. Wright, in your capacity as executive vice president of the Citizen's Federal Savings and Loan, were you in general in control of the records and books of the corporation, among other things?

A. You might say indirectly. We have a bookkeeper and secretary.

Q. But you were ultimately responsible?

A. Yes, sir.

Q. And they carried on and kept the records pursuant to your direction?

A. Yes.

Q. And order?

A. Yes, sir.

Q. And you are generally familiar with the books and records of your association?

A. Yes.

(330) Q. I show you Exhibits 45-A through 45-F, inclusive, and ask you if these are the published statements of the financial condition of the Citizen's Federal Savings and Loan Association of Port Huron for the period ending December 31, 1947, and for each year thereafter, up to and including December 31, 1952?

A. Yes, sir.

Q. And were these statements published in the newspaper pursuant to the requirements of the Federal statute under which your Association was incorporated?

A. Yes, sir.

Q. And did you also serve or file a copy of such statement with the Federal Home Loan Bank Board, is it?

A. Federal Home Loan Bank of Indianapolis.

Q. And that was also done pursuant to statute?

A. Yes, sir.

Q. And is this a true and correct record in each instance of the financial condition of the Association for the periods in question?

A. To the best of my knowledge.

Q. As appears from the books and records of your Association?

A. Yes, sir.

Q. And these statements as published and as filed were sworn to under oath by you as secretary, originally, and later as executive vice-president?

(331) A. Yes, sir.

Q. As appears on the face of them?

A. Yes, sir.

Q. And there is a statutory penalty for wilfully filing an erroneous or false statement?

A. Yes, sir.

Q. And would your books and records, sir, be available for the examination and inspection by the Attorney General for the State of Michigan in connection with this lawsuit to check the correctness of these statements, 45-A through 45-F, inclusive?

A. I believe so.

Q. They would be available for him?

A. Yes, sir.

Mr. Klein: I would like to offer Exhibits 45-A through 45-F, inclusive; and they are the same, I might say, as have been attached to the notice of intention which was served upon counsel for the defendant a long time ago.

Mr. Dexter: We would object to the admissibility of these statements for several reasons. Some of the statements do not relate to the period in question, that is, 1952. They are all hearsay, and not the best evidence of the facts purported to be proved by the introduction of such exhibits. And, they are otherwise immaterial and irrelevant in this (332) proceeding.

Mr. Klein: I would like to ask the witness a question.

Q. (By Mr. Klein, continuing): Were there reports made in the regular course of the business and in the regular course of the Association business; was it its duty and procedure to make such reports?

A. Yes, sir.

The Court: Have you asked of this witness—I want to be sure—the question which you asked with reference to some of the others, whether they truly reflect the condition of the books?

Mr. Klein: I thought I did, but I will again ask it.

Q. (By Mr. Klein, continuing): Do they truly and correctly reflect the entries and records on your books of your Association for the periods in question?

A. I think they do; I swore to it.

Q. You swore that they do, and you now swear that they do?

A. Yes, sir.

The Court: They may be received, although I think that I should say the same as I did this morning, that if the Attorney General wishes to inspect the books and indicates what books he wishes placed in evidence, we will make a trip to the office and have them marked in (333) evidence, the books from which these reports are made. Subject to that, they will be received.

Q. (By Mr. Klein, continuing): Mr. Wright, do you recall the capital of your association when it was originally organized?

A. Yes, sir.

Q. What was it, sir?

A. A little over \$10,500.

Q. And as of December 31, 1952, according to your statement, it had savings accounts of \$6,776,000?

A. Yes, sir.

Q. In addition to surplus, specific reserves and general reserves?

A. Yes, sir.

The Court: What was the year of your organization, Mr. Wright?

A. 1938.

. . . . .

Q. (By Mr. Klein, continuing): And in what area do you generally operate your business, sir?

A. Oh, the area surrounding Port Huron.

Q. A general area of how many square miles would you say?

A. Oh, I don't know; we have only half the territory to the St. Clair River; I would say an area of approximately fifty miles up and around Port Huron.

(334) Q. And your capital is obtained generally by investors investing in your savings shares?

A. The capital—the money we work with is derived from our savings accounts, yes, sir.

Q. And your savings account investors get a certificate, do they not?

A. No; we have two classes; we have investment certificates and regular savings books.

Q. And do you have a copy of those?

A. I didn't bring them, no, sir.

Q. Well, do they generally—they are not creditors of the association, are they?

A. No, sir.

Q. And the Association does not agree to pay them any interest?

A. No, sir.

Q. And the Association does not take deposits?

A. No, sir.

Q. And investor and member shares, as you denominate it, takes the risk of gain or loss in the operation of the business, do they not?

A. Yes, sir.

Q. If the business is profitable, dividends are paid, and if it is more profitable greater dividends are paid?

A. I will say that dividends are paid, yes, sir.

Q. And if there was a loss, dividends might be curtailed, or (335) there might not be any, is that correct?

A. Yes, sir.

Q. Now, you advertise for savings investors from all classes, economic classes, do you not?

A. We make no distinction.

Q. In other words, the more money you can get, the better?

A. Well, that is—the more savings you get the more mortgage loans you can make.

Q. Right, and you do not put any limitation on your accounts, do you, the moneys you take, at least for 1952?

A. I think we would, to a certain extent.

Q. Well, in 1952 did you have any limitation?

A. I don't think that there was enough money—I don't think we had to at that time.

Q. Well, you didn't, in any event, have a limitation?

A. No, sir.

Q. And you knew many of your depositors personally?

A. A great many, yes, sir.

Q. And would you say there were a number from professional classes?

A. You mean like—

Q. (Interposing): Lawyers, doctors.

A. Doctors and business men.

Q. Business men. Did business firms invest in shares?

A. At the moment I cannot recall any; possibly so.

(336) Q. Various estates, executors, trustees?

A. I don't believe we have any executors or trustees.

Q. Charitable organizations?

A. Well, like what?

Q. Any charitable organization that had money to invest—universities?

A. No.

Q. Hospitals?

A. No.

Q. Organizations of any kind?

A. We do not have any of those.

Q. You had business men who invested?

A. Some, yes, sir.

Q. People who owned their own businesses?

A. Yes, sir.

Q. And of all economic and income class levels?

A. Yes, sir.

Q. No person had to be a member before becoming an investor?

A. No, sir.

Q. And he became a member when he became an investor, shareholder?

A. Yes, sir.

Q. And what were the rights of an investor?

A. They had the right to attend annual meetings and vote for directors.

(337) Q. Was there any limitation on his voting right?

A. Yes, sir.

Q. What was the limitation?

A. Fifty votes.



Q. Did the investor have any obligation entailed with his becoming a member?

A. No, sir.

Q. Do you know how many members you had in 1952, investors—investments, I mean?

A. No, I don't know; unless it was just shown on the report.

Q. Was it in the thousands?

A. I think so.

Q. You do think so?

A. Yes, sir.

(338) Q. (By Mr. Klein, continuing): Investors in shares, you call member share accounts, do you not?

A. Yes, sir.

Q. And what terminology should I use?

A. Talk to me in plain English, say "savings accounts."

Q. But they are not creditors of your Association?

A. No, sir.

Q. They are shareholders, are they not?

A. That is right; that is the terminology that is used there, yes, sir.

Q. In fact, they may not be depositors or creditors?

A. Not depositors.

Q. They must be shareholders under the law, isn't that correct, sir?

A. Their accounts are called "share accounts."

(339) Q. Yes, sir.

A. But—

Q. (Interposing): So, as I understand it, did your Association in 1952 advertise extensively for share accounts?

A. We used the term "savings accounts."

Q. Well, all right, savings accounts.

A. We advertise for savings accounts, yes, sir.

Q. Do you have any of that advertising with you, that form of advertising?

A. No, sir.

Q. We had asked you to bring it in our subpoena?

• • • Well, I will show you an advertisement of the Citizen's Federal Savings, and ask you if that was the kind that was published in 1952?

A. Yes, sir.

Q. And at that time you were paying two and one-half per cent dividends?

A. Yes, sir.

Q. What dividends do you pay at the present time?

A. December 31st last we paid three and one-half per cent.

(340) Mr. Dexter: What period of time is that related to?

A. That was 1952.

The Court: There were two questions. The one he said at the time this ad was two and one-half, but on December 31st last it was three and one-half.

Mr. Dexter: Well, I would object to that question and ask that the answer be stricken, your Honor, as being subsequent to the period in question.

The Court: I think anything after 1952 should be, unless there is some special reason for changing the ruling, should be put on your special record.

Mr. Klein: All right, I would like that on the special record; there won't be many.

The Court: It will be everything since 1952, unless you bring it to my attention for a special ruling—will go on the special record rather than the general record.

Mr. Klein: Right, sir; I do not think there will be many of them.

(A newspaper advertisement was thereupon marked for identification by the Reporter as Plaintiff's Exhibit No. 46.)

Q. (By Mr. Klein, continuing): Exhibit 46 is an advertisement of the Citizen's Savings, is it not, I think you testified?

(341) A. Yes, sir.

Q. Used in 1952?

A. I wouldn't say—somebody has marked "12/16/52," but I will say that is similar to advertising we were using at that time.

Q. And these are advertisements for, as you say, savings accounts?

A. Yes, sir.

Q. Mr. Klein: I should like to offer Exhibit 46 in evidence.

. . . . .

(342) The Court: It is a newspaper ad. Is there any question about it?

Mr. Klein: He said, "Yes." And, was this published in the Port Huron newspaper?

A. Yes, sir.

Q. And did your Association publish similar ads in 1952, seeking savings accounts or shares?

A. Yes, sir.

Q. You endeavored to get as many and as large a savings account as you could?

A. Yes, sir, that was our business.

Q. That was your business.

Mr. Klein: I should like to offer Exhibit 46 in evidence.

. . . . .

(343) Mr. Dexter: For what purpose is it offered, Mr. Klein?

Mr. Klein: To show the nature and character of this Association, the nature of its business, the source from which it got its money capital, which it then, in turn, used, we contend, in competition with the business of plaintiff bank.

Mr. Dexter: I do not believe, your Honor, that it is admissible for that purpose at all. I think it is admissible to show, maybe, there was an ad.

The Court: It may be received.

. . . . .

(344) Q. (By Mr. Klein): From Exhibit 46, it appears that you had 10,000 share accounts or share investors; is that correct?

A. 10,000. We had 10,000 savings customers.

Q. At that time?

A. Yes, sir.

. . . . .

Q. (By Mr. Klein): Do you know that of your own knowledge, sir; whether your association had 10,000 or more savings customers or accounts?

A. I would say this: That if they appeared in our ad, we had.

Q. And as Executive Vice-President, would you know?

A. Yes, sir.

. . . . .

(345) Q. (By Mr. Klein): I show you Exhibit 46-A to 46-F, inclusive, and ask you if these are advertisements of the character which your association published in the Port Huron newspaper in the year 1952?

(346) A. I won't say '52, but I will say that we did publish advertisements of like nature.

Q. In '52?

A. I won't say in '52, but I would say that during our period of business, we have used such ads.

Q. When did you change your interest rates, sir, or your dividend rates?

A. June, 1957.

Q. Would you recall whether any of these or ads of this character appeared in 1952 or prior?

A. I can't identify the date. There is nothing in the printed matter to aid me in answering that.

Q. Well, could you check these exhibits against your records and advise whether or not this is the type of advertising used in '52 in some way?

A. I think I could if I had the entire sheet of the newspaper with the date on it.

Q. We only have the dates marked in as we have them. They are all marked '52, but that is up to you. You put them in; I didn't.

Well, it was not necessary for an investor in shares or a savings account holder to become a borrower?

A. No, sir.

Q. And it was not necessary, was it, for a borrower on a mortgage to become an investor in shares?

(347) A. No, sir.

Q. How did you employ the capital you obtained in your business?

A. By making real estate mortgage loans, purchasing capital in the Federal Home Loan Bank, and buying Government bonds.

Q. And what types of mortgages did you make, sir, in 1952?

A. On residential properties.

Q. Did you make FHA mortgages?

A. I believe so. We make FHA mortgages.

Q. And did you make Veterans mortgages, guaranteed Veterans mortgages, in '52?

A. We have entered into the program since its inception.

Q. And you then in '52 did?

A. I imagine so.

Q. And you also made conventional mortgages?

A. Yes, sir.

Q. And when a person sought a mortgage loan, did he have to be a member before he filed an application?

A. No, sir.

Q. You advertised through various means for people to loan money to, did you not? You put ads in telling them that you were loaning money on mortgages?

A. Yes, sir.

Q. And did you loan people of all economic class levels and income class levels?

A. To people that desired mortgages for home ownership, yes, sir.

(348) Q. And it didn't make any difference; you appealed to all class levels for the loans?

A. Yes.

Q. And what was the average amount of loans you made? What was the average mortgage amount in '52, if you recall?

A. I wouldn't know precisely. I would say probably from three to five, six thousand dollars.

Q. Did you make loans of \$20,000?

A. No, not at that time.

Q. None?

A. Not at that time, I'm sure.

Q. \$15,000?

A. I doubt it.



Q. Did you loan on any commercial property at all?

A. No, sir.

Q. In '52?

A. No, sir.

Q. Did you before that?

A. No, sir.

Q. And when a person made a mortgage application—do you have a form of application here with you?

A. No, I do not.

Q. You do not. Did you seek from him his financial net worth?

A. Yes, sir.

Q. Did you in the application ascertain what his income was?

(349) A. Yes, sir.

Q. And did you also provide for a place for the appraisal of the property which he was to subject to the mortgage?

A. We had appraisals made, yes, sir.

Q. You had appraisals made?

A. Yes, sir.

Q. And in determining on what the basis of the loan was, what did your association do as a matter of practice in '52? What did you base your granting or rejecting a loan upon?

A. The credit of the individual and the appraisal report.

Q. And was there any—

A. (Interposing) Information in the application.

Q. Do you know what policy your association followed in appraisal value in relation to the amount of loan granted—the minimum and the maximum, and your policy in '52?

A. Let us say there was no minimum, and the maximum—you mean percentagewise?



Q. Yes.

A. Probably 70 to 75 per cent.

Q. What was the average amount, though, would you say?

A. Perhaps about 60-something.

Q. About 60 percent. In other words, the mortgage would be about 60 per cent of the appraised value?

A. I imagine about that.

Q. And these loans were amortized over a period of years monthly?

(350) A. Yes, sir.

Q. And what was the average duration of the mortgage—average, I am saying?

A. I couldn't tell you. The policy was around at that time about maximum of about twelve years.

Q. The maximum—that was your policy?

A. Yes.

Q. And what was the average, would you say?

A. Somewhere in that neighborhood. It depended on the size of the loan.

Q. And it was amortized in equal monthly installments?

A. Yes, sir.

Q. And do you know from your experience in the business what other types of institutions were out loaning money secured by home mortgages in competition with your business in and around Port Huron?

A. Yes, sir.

Q. What types of institutions?

A. Banks, life insurance companies, credit unions—at least those three.

Q. You know that the Michigan National Bank was out seeking mortgages secured by residential mortgages?

A. Yes, sir.

Q. And you and they sought mortgages on property in the same localities, did you not?

(351) A. I believe we used about the same territory.

Q. About the same territory. And you sought mortgages from the same general class of borrowers, did you not?

A. I imagine so.

. . . . .

Q. (By Mr. Klein): You have been in the savings and loan business how long, Mr. Wright?

A. Twenty years.

Q. And as a good businessman, I assume you are careful to ascertain who your competition is in getting business, aren't you?

Mr. Dexter: Your Honor, still we don't have this word "competition" defined, and that is one of the legal conclusions that this lawsuit is directed toward, and without any definition of it, I believe that the question is ambiguous for the purposes of this lawsuit.

Mr. Klein: I will reframe it.

(352) The Court: Well, the witness doesn't seem to have any trouble, but maybe you and I are, so maybe it is just as well to understand what he understands by it.

Q. (By Mr. Klein): What do you understand by my question when I ask if you made it your business in '52 to know who your competition was in seeking people who were going to borrow money from you or other institutions secured by home mortgages?

A. You want to know if I know who were making mortgages in my territory?

Q. That were secured by residences—mortgages on residences, yes sir.

A. Well, I can't answer that when you say "secured by residences," because I wouldn't know. If a mort-

gage was filed in the Register of Deeds' office, I wouldn't know whether it was on a residence or a farm or commercial property.

Q. But you knew, I think you just testified, that the Michigan National Bank sought the same lenders in the same neighborhood as you did, your company did; is that correct, sir?

A. I will answer that this way: We were both operating in the same territory. We were both making real estate mortgages.

Q. And you know they were making real estate mortgage loans on residential properties, do you not?

A. I know they do sometimes, because sometimes they pick up one of my mortgages that was on a residence.

(353) Q. And sometimes your association refinanced a mortgage which they had. That happened, too, did it?

A. Yes, sir.

Q. It worked both ways. That was in 1952, wasn't it?

A. Yes, sir.

Q. Now, in 1952, according to your balance sheet for December 31, 1952, Exhibit 45-F, you had first mortgage loans on hand with balances of \$6,360,000, did you not?

A. Yes, sir.

Q. And FHA improvement loans of \$103,000?

A. Yes, sir.

Q. And as against that, you had savings accounts of \$6,776,000?

A. Yes, sir.

Q. And a total capital and surplus account of \$7,800,000?

A. Yes, sir.

Q. And was that your main business, the mortgage business, making loans secured by mortgages in 1952?

A. Yes, sir.

Q. Did your association sell Traveler's Checks?

A. Yes, sir.

Q. And did you perform any other functions such as issuing United States Defense Bonds and redeeming them?

A. Yes, sir.

Q. Did you issue money orders in any amount?

A. We issued money orders, yes, sir.

(354) Q. Did you in 1952 have a Christmas Savings Plan?

A. Yes, sir.

Q. And an Add-O-Bank Plan for the children to save?

A. You know what that is?

Q. No, sir. A little bank?

A. That's right.

Q. And you sold Traveler's Checks?

A. Yes.

Q. I will show you what purports to be an ad, to refresh your memory, of the Citizens Federal, under a heading "Other Plan of Institution," and ask you what that might mean compared with the saving association?

A. Now, what is it you want me to answer about this?

Q. What did you mean, "Other Plan of Institution"?

Mr. Dexter: Your Honor, that particular piece of paper, I believe, is not identified as to time.

Mr. Klein: We will get it identified, sir.

(An advertisement of Citizens Federal Savings & Loan Association was marked Exhibit 46-G by the reporter.)

Q. (By Mr. Klein): I will show you what purports to be an advertisement of the Citizens Federal, marked

46-G, and ask you if an ad such as that was published in a Port Huron paper in 1952?

A. What is it you want me to answer?

Q. Was that ad or one like it published in the Port Huron paper in 1952?

(355) A. I imagine it was. Now, I won't say in 1952, but I will say this: That we have published ads similar to that. I won't say as to the particular time, because I have no way of identifying it.

Mr. Klein: I should like to offer Exhibit 46-G in evidence.

Mr. Dexter: I obviously object, Mr. Klein. . . .

Mr. Klein: May I ask the witness a question?

Q. (By Mr. Klein): Would you say there was an advertisement of this character published by your association in '52 or prior?

A. I would say that an ad similar to this has been published.

Q. In '52 or prior?

A. I don't know the date. I can't tell you that.

Q. And this marking of June 10, 1952 on there, does that refresh your memory in any way? Would that help you?

A. That isn't my writing.

Q. That is not your writing, sir?

A. No, sir. I couldn't answer that, because I don't know.

Q. You don't recall. Now, as I understand it, you appealed to any person in the community to make a loan from your association?

A. Our services are available to the community.

Q. The borrower, prior to making an application, did not have to be a member?

(357) A. No, sir.

Q. He didn't become a member until his application for a loan was approved?

A. Until the loan was made, yes, sir.

Q. And what rights and what obligations did becoming a member then entail?

A. It entitles him to attend our annual meeting of the board of directors and vote.

Q. One vote?

A. One vote.

Q. And are there any liabilities entailed with his becoming a member?

A. No, sir.

Q. Does he have a payment to make to become a member?

A. Make the mortgage loan payments.

Q. In other words, he borrows the money and he has agreed to pay it back; is that correct, sir?

A. That is correct.

Q. Other than that, you appealed to everyone in 1952 to borrow money from you; isn't that correct?

A. Our services were available to the public in our territory.

Q. Now, to get back to the investment situation again, your association in 1952 had investors which were pension funds, did you not—pension funds, trustees of pension funds invested in your savings and loan shares?

A. I can't recall anyone. I couldn't say.

(358) Q. You had investors that were perpetual care funds, people or trustees for perpetual care funds?

A. Like what now?

Q. Any kind. Cemetery funds perpetual care.

A. I am not sure. I think possibly we might have had some cemetery funds.



Q. And you had investors who were trustees of legal trust funds, did you not?

A. We might have.

Q. Did you in '52?

A. I don't know. I can't answer that specifically.

Q. Did you have investors that were corporations?

A. I think possibly we did have.

Q. Did you have a number of corporations?

A. Not too many.

Q. Did you seek to get corporation accounts?

A. All savings accounts that came to us were accepted.

. . . . .

Q. (By Mr. Klein): I will show you what purports to be a newspaper advertisement, which has been marked Plaintiff's Exhibit 46-H, and ask you whether an advertisement of that character was published in '52 or prior in the Port Huron newspaper?

A. That looks like an ad that we had published. I can't say as to the year 1952. I can't identify it as to time.

Q. Would you think it was in '52?

A. It might have been. It might not. I can't tell. I can't identify it as to time.

. . . . .

Q. (By Mr. Klein): Looking at that exhibit, does that refresh your memory as to seeking savings accounts from pension fund trustees?

A. Yes, sir.

Q. And you did seek savings accounts from pension fund trustees?

. . . . .

(363) Q. (By Mr. Klein, continuing)—in 1952?

A. We have, yes, because we always have.



Q. You have always done so?

A. Yes, sir.

Q. And you sought savings accounts from trustees of legal trust funds, did you not?

A. Yes, sir.

Q. And you sought savings accounts from corporation accounts, did you not?

A. Yes, sir.

Q. And you sought them from perpetual care fund accounts?

A. Yes, sir.

. . . . .

Q. Now, Mr. Wright, I will show you a photograph which has been marked Plaintiff's Exhibit 47-A and ask you if you can see on there the location of the Citizen's Federal Savings and Loan Association building?

A. Well, I can identify Michigan National Bank in that picture.

Q. And where there is marked in ink can you identify the Citizen's Federal building?

(364) A. That is a part of our building.

Q. Part of your building to the left side of 47-A?

A. Yes, sir.

Q. And then 47-B is the entire front of your building; isn't it?

A. Yes, sir.

Q. And it is within four doors from the Michigan National Bank offices?

A. You have to cross the street. That is four doors. That is People's Bank Building, that is the Wright Hoyt Building, and this is the Citizen's Federal Building.

Q. And you have counters like banks inside of your bank building?

A. Yes, we do.

. . . . .

(365) Mr. Klein: Your Honor, I don't know if I offered before these advertisements, Exhibits 46-A through 46-H, inclusive.

The Court: Well, if I remember the testimony correctly, the witness was not able to state whether they were prior to '52 or not, during or prior to '52, and unless there is an offer on your part to later produce—

Mr. Klein (interposing): I will endeavor to do so, sir, and if I do not, we will call it to your attention.

The Court: They may be received, subject to the date being established.

Mr. Klein: If we do not establish the date, why, then, as I understand it, the condition has not been met.

The Court: That is right.

Mr. Klein: And 46-A and B have been accepted in evidence, have they not? I meant to offer 47-A and 47-B, sir.

The Court: 47-A and B, I didn't hear you say anything about the dates. Has there been any change since '52 there?

A. No, sir.

(366) (A printed form for Application for Loan was marked Plaintiff's Exhibit No. 48 by the reporter.)

Q. (By Mr. Klein): I will show you a printed form marked Plaintiff's (367) Exhibit 48, having a heading, "Application for Loan, Citizen's Federal Savings and Loan Association," and ask if that is the application for loan form your association used in '52?

A. I can't identify it as to year. There is nothing on that to aid me in making a decision. I would say that we have used a form similar to that in the past.

Q. And you are of the opinion a form of this character was used in 1952?

A. It might have been. Again, there is nothing on here—I looked on here to see the date it was printed.

Q. You know in general the information you sought from applicants in '52, do you not?

A. Well, as I say, we have used a form similar to that in the past. We do not use it at the present time, but we have used—

Q. (Interposing): You think you used one like that in 1952?

A. I can't identify it as to year.

Q. Did you in 1952 make construction loans to builders?

A. Yes, sir.

Q. And do you have any notion as to the amount of those construction loans in 1952?

A. No, sir, I wouldn't know.

Q. Did you make loans for new buildings, buildings in the process of construction, in 1952?

A. That is the same as construction.

(368) Q. And then you made a loan on buildings already in existence?

A. Yes.

Q. And then you made loans for refinancing where a man had a loan from another company?

A. Yes.

Q. And I think you testified you refinanced some of the Michigan National Bank where they had mortgages?

A. And refinanced some of ours.

Q. And they refinanced some of yours?

A. Yes, sir.

Q. In 1952. And these construction loans I am talking about were to builders themselves in '52 in many instances, people who were in the business of building houses?

A. Yes, sir.

Q. And did you make loans where you knew the money was to be used for other purposes than construction of homes?

A. Not that I know of.

Q. Where the funds were used for private purposes so long as you had the security of the mortgage?

A. Not that I know of.

Q. To finance new automobile purchases, so long as you had a mortgage on the home?

A. I doubt that.

Q. Do you recall that in 1956 the aggregate amount of your mortgages outstanding were approximately \$1,600,000? In 1946, (369) I misspoke.

A. Is that on that statement?

Q. Well, the statement goes back to '47, I believe.

A. December 31, '47, I can answer that question.

Q. Yes, it was around 2 million dollars, wasn't it, a little over 2 million dollars?

A. Yes, sir.

Q. And at the end of December 31, '52, your mortgages were in excess of six million three and 103 thousand FHA mortgages?

A. Yes, sir.

Q. And your share accounts in 1947 were approximately \$2,300,000, and in 1952 they were in excess of \$6,700,000?

A. Yes, sir.

Q. Did your mortgage loans in 1952 include FHA Title 2 improvement loans?

A. Title 1.

Q. How about Title 2, sir?

A. Title 1.

Q. You had Title 1. Did your association pay any personal property taxes in 1952?

A. I can't answer that.

Q. You don't know?

A. No, sir.

Q. Can you ascertain whether you paid personal property taxes (370) by calling your office and getting a report before we adjourn?

A. Not this evening.

Q. Can't your bookkeeper tell you whether you paid any personal property taxes in 1952?

A. Not this afternoon.

Q. You can't tell from the books and records?

A. No, sir.

Q. When can you get that information, sir?

A. Tomorrow.

. . . . .

(371)

*Cross Examination*

By Mr. Dexter:

Q. You realize on the cross-examination questions that I have to put to you, Mr. Wright, they relate to the calendar year 1952, unless otherwise plainly indicated.

Do you have any knowledge of any opposition on the part of the banks in your area at the time that your charter was granted?

(372) A. I had a suspicion there was.

Q. That is in 1938?

A. Yes, sir.

Q. Do you know what the nature of that opposition was?

A. Yes, in setting our operation, we had a form upon which we secured signatures of people who thought the establishing of a federal savings and loan association in Port Huron was a good idea, and they set down their names, and also they set down the amount that they wished to contribute toward the formation of such an organization. And several of those people came to me and said to me, "My gosh, Bert, I am sorry, but I would like to take my name off that paper I signed. I find that I just can't go through with it."

Q. Did they give any reason why?

A. Not specifically.

Q. You don't know as a fact, then, of any particular opposition by banks as such?

A. Just as I say, I had a slight suspicion there was some opposition.

Q. But you have no knowledge of any formal opposition at all at the time you were incorporated?

A. No, sir.

(373) Q. All right. Would you explain the capital structure, including the types of shares issued by your Association?

A. We have two accounts, they are both savings—they are all savings, we have two forms, for those who wish to place a lump sum with us, and on which they will have their dividends mailed to them; we have a certificate; and others, we have just a plain old-fashioned savings account book.

Q. May any of the shares be assigned?

A. The certificates and books may be; they both may be.

Q. They both may be assigned?

A. Yes, sir.

Q. May they be assigned without consent of the Association?

A. I think we have to give our consent to it.

Q. You have to give your consent before they can be transferred. May these shares be redeemed or purchased at the option of the Association?

A. They may.

Q. Have the stockholders and directors specially authorized by resolution, all types of business activities in which your Association engages?



A. The directors have full charge on those things.

Q. But they have authorized that?

\*A. Yes, sir.

(374) Q. Describe the nature of each category of your assets and liabilities.

A. Cash on hand and in banks—

Q. Just the nature.

(375) A. That is money we had in banks; U. S. Government bonds; stock in Federal Home Loan Bank; first mortgage loans on savings accounts; FHA improvement loans; property sold on contract; real estate owned, office building and equipment; deferred charges and other assets.

Q. Is most of the cash you have on hand—I mean is most of your cash, the \$524,946.44, shown on Plaintiff's Exhibit 45-F, your balance sheet of December 31, 1952, on deposit in banks?

A. In banks; yes, sir—just a minute—cash on hand and in banks; well, that is just what it means; we have a working fund and the rest is in banks.

Q. Well, do you know what the size of that working fund was that was not on deposit in banks?

A. Yes, we have a working fund, a day by day working fund, at that time, of approximately \$30,000.

Q. And the rest of the \$524,946.44 was actually on deposit in banks?

A. Yes, sir.

Q. Do you know what banks they were on deposit in?

A. Michigan National Bank, Peoples Savings Bank, Federal Home Loan Bank of Indianapolis.

Q. What cash reserves and deposits are you required to keep?

A. I cannot answer that.



Q. You don't know what percentage it was?

A. No, sir.

(376) Q. Can you get that information for us?

A. Yes, sir.

Mr. Dexter: Would it be all right if that information is sent back with the personal property tax information, Mr. Klein, by Mr. Sullivan?

Mr. Klein: That is all right; I may want to examine him about it.

Mr. Sullivan: What did you say it was, the reserves?

Mr. Dexter: What cash reserve on deposit that they are required to keep?

Mr. Sullivan: The reserve requirement for 1952?

Mr. Dexter: That is right. Does that depend on statute or on regulation, or what does it depend on?

Mr. Sullivan: Regulation.

A. You mean the charter requirement of the reserves—that is five per cent in the first twenty years—

Q. (Interposing): Was there any other requirement of cash reserves?

A. No, sir.

Q. In other words, the rest of the reserves and deposits you could keep in a non-liquid form?

A. Yes, sir.

Q. But that is a matter of regulation?

A. Yes, sir.

(377) Q. So if there is any difference between what the regulation required in 1952, and your testimony, the regulation would control, is that right?

A. Yes, sir.

Q. Because cash reserves and deposits were kept according to the applicable regulations?

A. Yes, sir.

Q. Describe your sources of capital and borrowed money?

A. And borrowed money—we are permitted to borrow from the Federal Home Loan Bank, giving our mortgages as security, or our Government bonds.

Q. What other sources of capital and borrowed money do you have?

A. Well, of course we are privileged to borrow from banks or other sources if we felt the need of it.

Q. In 1952 did you have any borrowings from banks?

A. None, only the Federal Home Loan Bank, as shown on that statement.

Q. I see. But, in years prior to 1952 have you had occasion to borrow money from banks other than the—

A. (Interposing): We have never borrowed money from anyone except the Federal Home Loan Bank.

Q. I see. Do you maintain checking accounts for your depositors or customers?

A. No, sir.

(378) Q. Do your shareholders have the right under the by-laws to withdraw their money on demand?

A. They do—under our charter we can require thirty days' notice; that is a charter provision.

Q. They cannot get it on demand if you wanted to insist that they couldn't?

A. That is right.

Q. As I understand it, you keep the cash that you are required to have on hand for business needs primarily in banking institutions, with a minimum reserve on hand in your own institution?

A. Yes, sir.

Q. Do you keep it in regular bank commercial accounts, except that that you have on hand?

A. Yes, sir.

Q. Do you maintain any other kinds of deposits in commercial banks, or do any other sort of business with commercial banks?

A. That is all.

Q. Do you loan any money to any finance companies?

A. No, except on homes.

Q. Then all of your loans are secured by mortgages on residential property?

A. Yes, sir.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

Q. Do you secure your loans by accepting shares of stock as (379) collateral?

A. No, sir.

Q. Bills of lading?

A. No, sir.

Q. Fungible goods?

A. No, sir.

Q. Assignments of accounts receivable?

A. No, sir.

Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No, sir.

Q. How large a percentage of the current market value of the security will you loan; this relates, of course, to 1952?

A. I think at that time, I think I answered that before, I think around—it was a policy we could loan up to perhaps seventy to seventy-five per cent.

Q. And what is the average interest rate of the loans which you make?

A. It varies from five to six per cent.

Q. I am relating this, of course, to the year 1952?

A. Yes, sir; the same answer.

Q. Do you make any straight mortgage loans?

A. No, sir.

Q. Do you make any open-end type of loan?

A. Yes, sir.

(380) Q. What divisions are made in your mortgages concerning prepayment?

A. Twenty per cent—it may be up to twenty per cent per year.

Q. Do you consider them more or less liberal than pre-payment clauses used in bank mortgages?

A. I am not in a position to answer that.

Q. Do you sell or assign any of your mortgages?

A. Only—assign only as collateral to the Federal Home Loan Bank, and we are permitted to sell, to assume F. H. A.

Q. Once the mortgage and the mortgage note are signed, how are the funds then made available to the borrower?

A. They may be disbursed directly to him, to the—in a construction loan, to me or the supplier.

Q. I am thinking of the source of the money that you draw on to give the money to the borrower?

A. Well, let me say that, as an illustration, John Jones makes a real estate mortgage today, if it is just an ordinary straight loan, no entanglements, we probably would issue a check on the bank in which we keep those particular funds, and that would be the Michigan National Bank, write him a check for the amount due him, or the amount that he would request at that time.

Q. In other words, in 1952, for this particular purpose, that is, to get money to loan to the borrower, you would draw a check on the Michigan National Bank?

(381) A. That is it, and I will explain that this way: We divide our funds up for different purposes between the banks, and the ones we use to pay on the mortgage are deposited in the Michigan National Bank.

Q. So you would actually draw a check on the Michigan National Bank?

A. Yes, sir.

Q. To give the borrower the money he had borrowed?

A. Yes, sir.

Q. Do you charge the full rate permitted for servicing of Veterans Administration and FHA mortgages?

A. The full service fee allowed, is that the question?

Q. Yes.

A. Currently, or in the past?

Q. In 1952.

A. Well, in 1952, I think at that time we did.

Q. Did you before that date?

A. Well, I cannot tell—I cannot identify dates, but there was a time when there was nothing—no charge permitted, just you made them a loan.

Q. But you have charged the full rate permitted?

A. Yes, sir.

Q. Now, stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year?

(382) A. 1952, I think there were—I think probably we had to borrow some money from the Federal Home Loan Bank to carry on our mortgage business at that time.

Q. In other words, there was an excess demand for mortgage money over what you could supply?

A. Yes, sir.

Q. Did the demand for mortgage money—money on homes, as I understand, is the only security you loan on—exceed that which could be supplied by your Association, other building and loan associations, and the banks, in the area in which you operated in 1952?

A. Yes, the demand exceeded the supply.

Q. All right. Would you describe the nature and extent of governmental supervision and the governmental agencies supervised in your association?

A. We are examined at least annually by Examiners through the supervisory department of the Federal Home Loan Bank Board.

Q. What is the nature of that supervision; can you describe it?

A. Yes, sir. They come right in and they take over until they get through; they examine all our books and records; count our cash, and have charge of all our records until they get through.

Q. Are you a member of the Federal Reserve System?

A. No, sir.

(383) Q. And the Federal Deposit Insurance Corporation?

A. No, sir.

Q. Are you permitted to borrow from the Federal Reserve System?

A. No, sir—well, inasmuch as this, that—you mean a member of the Federal Reserve System?

Q. But you are not able to borrow from the System such?

A. No; borrow from a member of that, like—

Q. (Interposing): A local bank?

A. A local bank.

Q. But you are not able to borrow from the System like a national bank, for example?

A. No, sir.

Q. Are you a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What agency of the Government, if any, insures your stockholders?

A. Federal Loan Insurance Corporation.



A. What provision, as a procedure, is made in your by-laws for paying off investors in the event of an emergency or insolvency?

A. Well, we can ask for—put it on a thirty-day basis and pay in rotation.

Q. In other words, put all the shareholders or accounts on a rotating basis on the first-in-first-out rule, on a thirty-day basis?

(384) A. Yes.

Q. What is the relationship between this procedure and the insurance furnished by the Federal Savings and Loan Insurance Corporation?

A. At the present time, in case of difficulty the Federal Savings Loan Insurance Corporation has gone in and taken over and paid off the savings customers.

Q. Are they required to prior to liquidation?

A. They always have so far.

Q. But they are not required to?

A. No, sir.

Q. In other words, the way that they would pay off would be eventually liquidate the assets, and then pick up the balance, is that right?

A. Yes, sir.

Q. Would you describe generally the principal place of operation of your business?

A. 511 Water Street, Port Huron, Michigan.

Q. Is it in an impressive building of any kind?

A. Well, it is a rather good-looking building.

Q. Do you have any branches of any kind?

A. No, sir.

Q. Do you operate completely from that one location?

A. Yes, sir.

(385) Q. How many employees do you have?

A. I would say about thirty-five.



Q. Is your bad debt reserve for Federal tax purposes computed in the same manner as banks?

A. I don't know.

Q. You have no knowledge of that?

A. No, sir.

Q. What was the market value of your shares in 1952?

A. One hundred cents on the dollar.

Q. Was it worth any more or any less?

A. Well, the reserve that we had set up was set up for their benefit.

Q. As a practical matter, the shares are worth their face amount?

A. Yes, sir.

(386) Q. What was the percentage thereof of all taxes paid by your association and its shareholders to the City of Port Huron and the State of Michigan?

A. Now, you are asking me a specific year?

Q. (By Mr. Dexter): 1952.

(387) A. I can't answer that.

Q. Could you get the answer?

A. Yes, sir.

(388) Q. (By Mr. Dexter): Mr. Wright, do you have the information in your file as to all the taxes that you have paid during the year 1952?

A. In dollars?

Q. Yes.

A. No.

Q. In dollars, the kinds of taxes and what they were and the amounts?

A. You are asking for real estate taxes?

Q. Your total taxes, whatever they are. I am not trying to characterize them for you.

Q. (By Mr. Dexter): Do you have those amounts?

A. Not with me.

Q. Well, I mean do you have them in your record?

A. Oh, yes.

Q. And can you make those available?

A. Yes, sir.

(394) Q. Turning to the balance sheet here of 1952, now, the items in mortgages and loans do not indicate the amount of mortgages and loans made in the year 1952; is that right?

A. That's right.

Q. That is a total?

A. Yes, sir.

Q. But there is nothing on the balance sheet to indicate what loans you made in 1952?

A. No, sir.

Q. Now, in 1952 did you have commitments for loans that would be reflected on your balance sheet that were not actually made—that is, the money actually disbursed?

A. We would have—you mean applications?

(395) Q. Well, actual commitments, yes.

A. We always have a carry-over of those.

Q. And how were those reflected?

A. We are doing that—we do not carry it as a liability, because it isn't made and it might be cancelled out.

Q. How do you handle committed loans where you have actually told the borrower or approved the loan but the money has not actually been paid out?

A. At that time we weren't doing anything about it in 1952. We were operating very close, and it wasn't necessary at that time.

Q. Did you pay an intangibles tax on the deposits in the commercial banks?

A. Did we pay the tax on the money we had in commercial banks? We paid the intangibles tax on the accounts our savings customers had with us. Is that the question?

Q. Well, you paid the tax on these; is that right?

A. Yes, sir.

Q. (By Mr. Dexter): Did you pay the intangibles tax on your (396) depositors' or your share accounts yourself?

A. Yes, sir.

Q. Did you pay any intangibles tax on your commercial accounts with the banks?

A. I can't answer that.

Q. You don't know whether you did or not?

A. No.

*Re-direct Examination*

By Mr. Klein:

Q. Mr. Wright, as I understood your testimony on direct examination, you testified that your association in 1952 and before solicited savings accounts from all people in unlimited amounts. Is that correct?

A. No.

Q. You didn't say that?

A. If I did, I didn't intend to.

Q. You did seek as many accounts as you could get, didn't you, in (397) '52?

A. In numbers?

Q. In numbers to start with.

A. Yes.

Q. And there was no requirement as to who the depositor, savings depositor, could be?

A. No.

Q. No consent had to be obtained to taking a deposit at the outset?

A. Only this—I don't want you to misunderstand me: That in the question you said about anybody and any amount.

I don't know as we had occasion to decline anyone who offered any extraordinary amount, because we don't get big business, but I do think that—I know we would have placed a limit on an extraordinary large account.

(398) Q. What do you mean by an extraordinarily large account?

A. Oh, say \$100,000, \$50,000.

Q. But you took accounts up to that?

A. If we accepted a \$50,000 account, we would have to give it serious consideration before we did something.

Q. Why would you have to give it consideration?

A. I learned from experience that it is hard to meet up with those accounts when they want to take their money out.

Q. But you did take accounts up to \$50,000?

A. I don't believe we ever did.

Q. You mentioned the figure; that is why I picked it.

A. I said if anyone wanted to open an account up to \$50,000, we would have to give it serious consideration.

Q. But you did have substantial accounts, though?

A. No, our accounts are rather small.

Q. You had accounts over \$10,000, didn't you, in amount?

A. That isn't a large amount these days.

Q. \$20,000 in '52?

A. Oh, no, I don't think so.

Q. Could you produce that information, sir, the size of your accounts in '52, the maximum size of your account?

What I was getting at, sir, I am talking about this consent on the assignment of shares. What provision in your articles, by-laws or directors' resolutions required (399) consent to transfer a savings account? Can you point to any?

A. No.

Q. You cannot?

A. No, sir.

Q. You don't make any such requirement, do you, when a man comes to make a savings deposit? It isn't a matter of consent, is it? You take anyone who comes along, don't you, and take his deposit?

A. Yes, sir.

Q. Have you ever denied any transfer of a savings account to anyone who wanted to transfer?

A. No.

Q. You didn't in '52 or before?

A. No, sir.

Q. Now, on this withdrawal business, sir. In the event any savings account holder wanted to withdraw, there was a limitation to the amount he could withdraw?

A. That is charter provision.

Q. How much is he limited to?

A. Ten percent.

Q. And then does he take his turn?

A. Yes, sir.

Q. And even after he asks for withdrawal, he is not a creditor at any time, is he?

A. No, sir.

(400) Q. He is always a shareholder?

A. Yes, sir.

Q. Even though he asked to withdraw; isn't that correct, sir?

A. Yes, sir.

Q. Now, on liquidation, the shareholder is entitled not only to the face amount of his shares, but to any amount of assets in excess of that pro rata, isn't he? In the event your association were to liquidate in '52, the shareholder would have gotten not only the face amount of his shares but any amounts in excess of the value of his shares on a pro rata basis?

. . . . .

A. He would be entitled to the amount in his account, plus earned dividends.

Q. And surplus and reserves?

A. I don't think that, in the case you mentioned.

Q. Who would get the reserves?

(401) A. There probably wouldn't be any.

Q. If there were any reserves, who would get them?

A. They belong to the shareholders.

Q. Pro rata?

A. Yes, sir.

Q. Did you make any mortgages in any counties other than St. Clair County in 1952 or before?

A. I don't know in particular, but we do make mortgages in St. Clair County and Macomb County and Sanilac County.

Q. Now, the more deposits you were able to get in '52, the more money you would have available for loaning on mortgages; isn't that correct?

A. That is correct.

Q. And you also could loan money in '52 on money you borrowed? You had the power to do that?

A. We had the power to borrow.

Q. And you did that?

A. I imagine we did.

Q. And competition for mortgages was pretty keen in '52, wasn't it?

Mr. Dexter: Your Honor, he has testified as to that, and he is using the word "competition" again, your Honor, which I think is not appropriate.

Q. (By Mr. Klein): You understand what I mean by the word "competition", don't you, people out lending money on (402) mortgages?

Mr. Dexter: Is that what you mean by competition, people out lending money on mortgages?

Mr. Klein: Different people in business in that area lending money secured on mortgages, in the Port Huron area.

Mr. Dexter: That is your definition of competition?

Mr. Klein: I have asked the witness a question.

The Court: You may answer.

A. It always has been.

Q. Was it in '52?

A. Yes, sir.

Q. Now, you talked about insurance for shareholders. Is there a limit to the amount of insurance they can get?

A. \$10,000 on each account.

Q. And if a man had more than ten thousand, that part was not insured?

A. If he had more than \$10,000 in one account, yes, sir.

Q. Do you know what rate of intangibles tax the association (403) paid on its shares in 1952 to the State of Michigan, talking about the rate?

A. No, sir, I do not.

Q. Do you know how many mortgages, new mortgages, you took in 1952?



A. Not in number, no, sir.

Q. In total amount?

A. No, sir.

Q. Would you say you took in excess of 600 mortgages in excess of 3 million dollars in amount in '52?

A. In excess of 600?

Q. Mortgages.

A. In 1952?

Q. In excess of 3 million dollars principal?

A. I would say that from the best of my knowledge we did not make 600 mortgages in '52.

Q. What is the best of your knowledge as to the approximate number of mortgages you made in '52?

A. Paid off there 400.

Q. And in what principal amount in the aggregate?

A. I couldn't tell.

Q. Would it be approximately 3 million dollars?

A. I just would have to guess.

Q. When can you get that information, sir? Amount of mortgages by type of mortgages and the principal amount; the number, (404) type and principal amount made in 1952?

A. I can answer that with the other.

Q. By type I mean FHA, veteran's loans, conventional mortgage.

A. You want them segregated?

Q. Yes, sir. Did you make such a report to the Federal Home Loan Bank Board, sir?

A. Yes, sir.

Q. Do you have a copy of that report with you?

A. For 1952?

Q. '52. Do you have a copy of the report for '52 with you, sir?

A. Yes, sir.

Q. That is for the year ended December 31, 1952?

A. Yes, sir.

Q. May I have it and have it marked as an exhibit, sir.

(405) (A copy of the Annual Report of Citizen's Federal Savings and Loan Association was marked Plaintiff's Exhibit No. by the reporter.)

Q. (By Mr. Klein): I will show you a document marked Plaintiff's Exhibit 49, consisting of 9 pages, and ask you if that is the annual report or a copy of the annual report of the Citizen's Federal Savings and Loan Association of Port Huron as at December 31, 1952, as filed with the Home Loan Bank Board and cooperating state department?

A. Yes, sir.

Q. And does that bear your signature any place?

A. I don't think so.

Q. It has the certification, does it not?

A. Of the secretary and president.

Q. Of your bank?

A. That is right.

Q. With its seal?

A. The seal of our association.

Q. And do you know whether this is a true and correct copy of the books and records as to the items there disclosed?

A. I am sure it is.

(406) Q. You are sure that it is, and on page 5 there is an analysis of the first mortgage loans made during the year, is there not?

A. Yes, sir.

Q. And there is a financial statement of assets and liabilities, capital gross operating income, reconciliation of undivided profits and surplus, reconciliation of re-

serves, first mortgage loans, analysis of first mortgage loans made during the year and total investor accounts and other items relating to the affairs of the association; is that correct, sir?

A. Yes, sir.

Mr. Klein: I would like to offer Plaintiff's Exhibit 49 in evidence.

The Court: What is the name of this bank that the report is made to?

A. Federal Home Loan Bank, Indianapolis, Indiana.

The Court: This is for the year ending what?

Mr. Klein: December 31, 1952.

Mr. Dexter: No objection, except the continuing one, as to materiality.

The Court: Received.

Q. (By Mr. Klein): Now, referring to Exhibit 49, Mr. Wright, to refresh your memory, you will see there were a total of 675 first mortgage loans made in 1952, were there not?

A. Yes, sir.

Q. And for the aggregate amount of \$2,700,000?

(407) A. Yes, sir.

Q. So when you said you thought there were less than 300, or 300 or thereabouts, you were in error?

A. I didn't think that we did that much business.

Q. In the first column it shows 173 construction loan mortgages in '52 for \$903,000; correct?

A. Yes, sir.

Q. And 190 first mortgage loans for the purchase of homes for \$1,073,000?

A. Yes, sir.

Q. And 39 refinancing loans for \$146,000, and 273 first mortgage loans in the aggregate amount of \$578,000 for other purposes; is that correct?

A. Yes, sir.

Q. What were the other purposes?

A. I couldn't tell you.

Q. You are chief executive officer of this bank; don't you have any notion as to other purposes?

A. Of this association.

Q. Of this association. Do you have any notion as to the purposes described as other purposes for which you loaned over a half a million dollars?

A. No, sir, I do not.

Q. You don't know, haven't the slightest idea?

A. I haven't.

(408) Q. Could you find out for us?

A. Sure.

Q. When can you find out, sir?

A. It might take some time to look through the records to find out.

Q. What has been your practice in '52 and prior to loan for other purposes? Have you any notion of any other purposes?

A. Nothing but having to do with home ownership. That would have to be the only other purpose. It couldn't be outside of that. It has something to do with home ownership.

Q. Isn't it possible that you made a loan secured by a home and the owner of the home used the money borrowed for some purposes other than buying, repairing or refinancing a home?

A. Our principal purpose is for the purpose of doing those very things.

Q. I am talking about other purposes.

A. I don't know. That is not broken down by me, and I don't know.

Q. Well, you haven't the slightest idea?

A. No, sir.

Q. Did you ever approve a loan for purposes other than construction, purchase of homes, refinancing?

A. I wouldn't know without looking at the records. I can't tell you.

Q. Well, we would like to find out, because we want to call on you to find out about that, sir.

(409) Now, according to this report, looking at Schedule 6, you had 56 depositors who had deposits of over \$10,000, didn't you?

A. Yes, sir.

*Re-cross Examination*

By Mr. Dexter:

Q. I want to clarify one point in your testimony, Mr. Wright. As I understand it, you stated that there was a greater demand for mortgage money than there was mortgage money for the year 1952.

A. I am not sure, but I believe that at that time we had to borrow money from Federal Home Loan Bank to take care of us.

Q. There was more demand for mortgage money than you had money to supply? In other words, it was a case of the market condition where people who wanted to borrow money for financing (410) homes were out trying to get institutions that had money available to loan on those homes?

A. Yes.

Q. That was the kind of market in '52 in Port Huron; is that correct?

A. Yes.

Q. Then you made a statement that could be misconstrued when you said that competition had always been keen in the mortgage business. Now, by that did

you mean that competition among people to get mortgage money has always been keen?

A. That is right.

Q. You were not referring to the competition between institutions trying to find people that wanted to borrow money?

A. No. Over a period of years, there have been, as I say, an excess of borrowers. The fact that we had to and did borrow money from the Federal Home Loan Bank to take care of the demand is proof of it.

It gets back to this, that in order to take care of the people in the community, we had to borrow money from the Federal Home Loan Bank to take care of the people who wanted to borrow money to take care of homes, to repair them.

Q. When you said competition was keen, you meant people trying to find money to borrow for their home mortgage purposes?

A. That is right.

Q. Because, I suppose, of the expanding nature of our time, the (411) development of new homes; is that correct?

A. That is right.

#### *Re-direct Examination*

By Mr. Klein:

Q. Did you borrow the maximum amount you could borrow from the Federal Home Loan Board?

A. No, sir.

Q. Did you get the maximum amount of savings accounts deposits you could get in '52?

A. I imagine we did.

Q. You tried to get as many as you could, and if the mortgage lending money was tight, why, the lender was



in a position to exact better terms for his mortgage and to be more conservative as to appraisal valuation, wouldn't he?

A. I don't just agree with that.

(415)

Wednesday, May 21, 1958,  
Lansing, Michigan,  
9:30 o'clock A.M.

(The hearing of this cause was resumed pursuant to the adjournment.)

SAWASKY, ANN M., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

Q. Miss Sawasky, you are connected with the Michigan Corporation and Securities Commission?

A. I am.

Q. In what capacity?

A. Director in charge of the Michigan annual reports.

Q. And just what do your responsibilities in that position entail?

A. The maintaining of all records in connection with the filing of the Michigan annual reports and the payment of fees thereon.

Q. And if any annual reports required to be filed are not filed, is it the responsibility of your office to follow up with (416) those corporations and ascertain why they have not filed?

A. That is correct.



Q. And if any annual privilege fees required to be paid by any corporations are not paid, is it the duty of your office to attempt to enforce the collection of those annual privilege fees?

A. That is right.

Q. How long have you held that position with the Michigan Corporation and Securities Commission?

A. For twenty years.

Q. Were you with the Secretary of State's office prior to that time?

A. Yes, but not in that capacity.

Q. In 1952 was it the practice of your office to receive annual reports from savings and/or building and loan associations?

A. No, sir.

Q. Was it the practice in 1952 to collect any fees from savings and/or building and loan associations?

A. No, we did not.

Q. Was it the interpretation of your office, those responsible for administering your duties, under Section 4, which provides for a payment of a four-mill privilege fee, Section 4 of Act 85 of the Public Acts of 1921 as amended, to require (417) building and/or savings and loan associations to pay any such four-mill fee?

A. As far as our Commission is concerned, it was the opinion that building and loan, savings and loan were not required to file Michigan annual reports or pay any privilege fees.

Q. To your commission?

A. That is correct.

Q. Did you interpret the law to require them to pay a four-mill fee?

A. We have an opinion to that effect.

Q. That they are required to pay?

A. That they are not required.

Q. Did your office at any time in practice or interpretation call upon any building and/or savings and loan associations to pay a four-mill annual privilege fee under Section 4 referred to in 1952, or at any time prior thereto?

A. We did not.

Mr. Klein: Thank you very much.

*Cross-Examination*

By Mr. Dexter:

Q. Miss Sawasky, did your office practice relate to the instructions you received from the Attorney General by an opinion dated June 15, 1953?

(418) A. That is the opinion I referred to, Mr. Dexter.

Mr. Dexter: I would like to have this marked as an exhibit.

Mr. Klein: If the Court please, the date of the opinion is subsequent to the 1952 period in question.

Mr. Dexter: It relates to the 1952 situation, your Honor.

Mr. Klein: I have no objection to it, in any event.

The Court: It may be marked.

(Thereupon an opinion of the Attorney General, dated June 15, 1953, was marked for identification by the Reporter as Exhibit No. 50.)

Mr. Dexter: I am just wondering, your Honor, whether we are going to number all the exhibits in consecutive order?

The Court: That is the practice in my circuit court. If you have a different practice, I will follow whatever you have here.

Miss Kohler: We have nothing set.

The Court: Let's follow it right along. The fact that you introduce it will be sufficient to indicate that you introduced it.

What is the date of that opinion, Mr. Dexter?

Mr. Dexter: June 15, 1953, Opinion No. 1662.

(419) Q. (By Mr. Dexter, continuing): I hand you, Miss Sawasky, Exhibit 50, and ask you if that is the opinion on which you or your Commission determined that you had no jurisdiction in reference to franchise privilege fee matters so far as savings and loan association matters are concerned?

A. May I elaborate a bit, Mr. Dexter?

Q. Yes.

A. During my tenure of office no building and loan association had ever filed or paid a privilege tax to the State. This opinion was brought about by the auditors of the State of Michigan who questioned whether or not we were properly interpreting the statute as concerns building and loan associations, so this merely confirmed what the office practice had always been.

Q. As related to the 1952 amendments also of Public Acts 1921, No. 85?

A. That is correct.

Q. By Act 83, Public Acts of 1952?

A. Yes.

Q. But this is the basis of your testimony that you have no jurisdiction?

A. That is correct.

Q. In reference to Savings and loan matters?

A. That is correct.

(420) Q. You also exercise no jurisdiction in reference to banks?

A. That is correct; we do not, state or national.

Q. As I understand it, this opinion related to your jurisdiction over those types of institutions?

A. That is correct.

Q. The savings and loan association institutions?

A. Yes.

(421) The Court: Very well. It will be received.

(422) ANDERSEN, CLAYTON C., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

The Court: State your full name for the reporter, please.

A. Clayton C. Andersen.

Q. (By Mr. Klein): Mr. Andersen, you are an officer of the Marshall Savings & Loan Association?

A. Correct.

Q. What is your office, sir?

A. Secretary-treasurer and manager of the office.

Q. You are also a director?

A. That's right, sir.

Q. And how long have you held that position, sir—  
I mean as secretary-treasurer?

A. Since 1947. I would say about August of '47.

Q. And were you employed by the Association before that time?

A. I was not.

Q. Could you tell us when the Association was incorporated, sir?

A. In 1920. The exact date—you want it from the charter?

Q. No, that's all right. And it was incorporated under the state law?

(423) A. That is correct.

Q. That is, the Building and Savings and Loan Association statute of Michigan?

A. That's right.

Q. And do you recall what its total assets were in 1920 when you started?

A. The total assets in 1920, it was \$12,203.32 at December 31, 1920. That would be the first year.

Q. And on December 31, 1930, how much were they, approximately?

A. \$243,726.26.

Q. And as of June 30, 1952?

A. \$659,922.98.

The Court: What was that—that was '52, was it, Mr. Klein?

Mr. Klein: June 30, 1952, it was \$659,922.98.

(A pamphlet containing the by-laws of the Marshall Savings & Loan Association was marked Exhibit 51 by the Reporter.)

Q. (By Mr. Klein): I will show you a gray pamphlet marked Exhibit 51 and ask you whether that is a true and correct copy of the by-laws of your Association which were in effect in the year 1952?

A. That is correct.

Q. And does it also contain a passbook?

(424) A. This does not. That is the by-laws.

Q. This is just the by-laws?

Mr. Klein: I should like to offer Exhibit 51 in evidence.

Mr. Dexter: No objection, except our continuing objection to materiality.

Q. (By Mr. Klein): As secretary and treasurer and general manager, were you in general charge of the office?

A. In 1952?

Q. Yes.

A. If that is the year, yes, sir.

Q. Were you responsible at least for the executive administration of the affairs of the Association?

A. Of the office, yes, sir.

Q. And the keeping of the books and records were under your supervision and direction, were they not?

A. That is correct.

Q. And the negotiating of mortgages?

A. That is correct.

(An annual report for the year June 30, 1953, was marked Exhibit No. 37-H-1 by the reporter.)

Q. (By Mr. Klein): I will show you two documents which are marked Exhibit 37-H, purporting to be the Annual Report (425) of your Association for the fiscal year ended June 30, 1952, and the second one marked Exhibit 37-H-1, being an Annual Report of the Association for the year June 30, 1953, as filed with the Secretary of State, Department of State, Building and Loan Division, and ask you if these documents bear your signature?

A. That is mine, yes, sir.

Q. In each case?

A. That is correct.

Q. And were these reports I have described made in the regular course of business of the Association, and was it in the regular course of such business of the Association to make such reports at the time they were signed and filed?

A. That is correct.

Q. Do each of these reports truly and correctly reflect the entries contained in the books and records of the Association for the period in question?

A. To the best of my knowledge, right, sir.

Q. And if counsel for the Department of Revenue, the Attorney General's office, or the Secretary of State of Michigan, wish to inspect and examine your books and records to ascertain the correctness of your sworn report, will you be willing to have them do so at their reasonable convenience?

A. That is right, sir.

Q. The books are open to their inspection and check of your sworn (426) report?

A. That is right, sir.

Q. You did make these reports under oath, did you not?

A. That is correct.

Q. I show you an exhibit that has been marked Exhibit 36-G, under the heading of "Building and Loan Division, Michigan Department of State, Monthly Report, Marshall Savings & Loan Association, December 31, 1952;" does that bear your signature?

A. That is right.

Q. And was that prepared in the regular course of business and filed in the regular course of business?

A. That is right.

Q. And does that report truly and correctly reflect the entries and records that are contained in your books of the Association for the period in question?

A. The period of December, yes, sir.

Q. The period of December 31, 1952?

A. That is correct.

Q. And it also indicates the transactions that took place during the month in respect to mortgages, does it not?



A. That is right.

Q. And your books are also open for inspection in that respect?

A. That is right.

Q. Yes. Now, I see as of December 31, 1952, according to (427) Exhibit 36-G, you had \$612,913.72 of shareholders' investment?

A. That is right, total.

Q. Total?

A. That is right.

Q. And that is broken up partly in optional savings shares?

A. That is correct.

Q. And partly in fully paid shares?

A. Right.

Q. That is correct?

A. That is right, sir.

Q. Now, is that the way your association obtains its capital?

A. Through those investments and optional savings fully paid, yes, sir.

Q. Did you advertise for investors to invest money with your Association?

A. We advertised, yes, sir.

Q. And a shareholder is not a depositor?

A. No, he is a shareholder, that is correct.

Q. And your association does not agree to pay him interest of any kind?

A. Just dividends.

Q. If you make money?

A. If we make money.

Q. And if you lose money, the shareholder loses his pro rata (428) share?

A. I assume that would be correct, sir.

Q. In other words, he is a shareholder in your corporation?

A. That is correct.

Q. The shareholder is not a creditor of your corporation, is he?

A. No.

Q. And even if he elects to withdraw, make a withdrawal—

A. (Interposing): He may.

Q. —he is not a creditor at any time while there is any amount outstanding; he is always a shareholder?

A. That is right.

Q. Is that correct, sir?

A. That is the way I understand it.

Q. Yes, sir. So he takes the risk of profit or the risk of loss?

A. That is correct.

Q. Do you advertise for shareholders extensively, sir?

A. No, I wouldn't say we have an extensive program of advertising.

Q. Well, do you advertise in the newspapers?

A. Once a month, sir.

Mr. Dexter: Your Honor, I don't know whether these questions are directed to 1952 or not.

Mr. Klein: For the year 1952.

A. Not in 1952, we did not, sir.

Q. (By Mr. Klein, continuing): How did you endeavor to get (429) shareholders?

A. We had our own mailing in 1952.

Q. You had a mailing list?

A. Well, we mailed it.

Q. You didn't have newspaper advertising, but you had direct mail advertising?

A. Yes.

Q. Do you have any of that advertising material with you?

A. I have not, not for 1952.

Q. Do you have it for prior years with you?

A. No—

Q. (Interposing): All right, that is O. K. I do not think we have discussed how large a community is Marshall, sir?

A. Six thousand, in round numbers.

Q. Six thousand in round numbers; and you operate pretty much within the community of Marshall?

A. That is very true, yes, sir.

Q. You endeavor, do you not, to get as many shareholders as you could?

A. Right.

Q. And the more shareholders' money you had, the more money would be available to you for loaning on mortgages and any other operations you might have had?

A. Right.

(430) Q. Now, I see, according to your report for the period ended December 31, 1952, referring to Exhibit 36-G, that there were outstanding as at that period 221 direct reduction first mortgage loans—

A. (Interposing): 201, sir.

Q. 201—I misspoke—201, in the aggregate amount of \$639,552.73?

A. That is correct.

Q. And your other assets consisted of investment in stock from the Federal Home Loan Board, other securities, cash on hand, office building, and so forth?

A. That's right.

Q. Now, this amount of mortgages I have referred to is the balance of all mortgages on hand as of that time, whether taken in 1952 or before?

A. That is the unpaid principal, sir.

Q. Now, according to Exhibit 37-II—well, before we get to that, for the period of June 30, 1952, you had 272 investors, did you not, shareholders?

A. That's right.

Q. No. You had 282 investors' accounts?

A. Oh, yes. 282 is the total.

Q. And they had the aggregate investment of \$572,000, in round figures?

(431) A. Yes, that's right.

Q. And for the period ended June 30, 1953, you had 335 investors, for an aggregate investment of some \$685,000 in round figures?

A. That's right, sir.

Q. What dividend rate did you pay in the year 1952?

A. Three per cent.

Q. And what do you pay at the present time?

A. Three and a quarter.

Mr. Dexter: I object to the last question, your Honor, and I think you have sustained those objections at prior hearings.

Mr. Klein: I ask that it be made a part of a special record, any period after 1952.

The Court: It may be made a part of a special record. Objection sustained.

Q. (By Mr. Klein): As far as seeking investors in shares, did you accept investments from anyone who came along to make investments?

A. All that we could accept legally, let's answer it that way.

Q. There was no qualification as to who might be an investor in 1952? In other words, anyone who came along and put the money in could become an investor, couldn't he?

A. Individually, yes.

Q. Yes. Now, did you appeal to investors or people to become (432) investors from all economic class levels?

A. Yes, sir.

Q. And all income class levels?

A. Yes, sir.

Q. In fact, the more money you could get, the better you liked it, didn't you?

A. Definitely.

Q. Did you put any limit on the amount a person could invest in shares?

A. That is right, sir.

Q. Did you?

A. Yes, sir.

Q. What was your limit?

A. Now, this is to the best of my knowledge. I think it was ten thousand, and we raised it to twenty thousand. I'm not certain as to what it was in '52.

Q. Now, when a person became an investor in shares, was he given a certificate of some kind or a passbook with a certificate in it?

A. That is right.

Q. Do you have a form of such certificate with you?

A. As issued in '52, I assume?

Q. As issued in '52.

A. That is the fully paid (handing document to Mr. Klein). I would like to have that returned, please, if I could, (433) because we obtained it since then, and we have destroyed all the stuff, and I have to have that one because it was a cancelled one.

Mr. Klein: Mark this an exhibit, please.

(An application for stock and a certificate for stock was marked Exhibit 52 by the reporter.)

. . . . .

Q. (By Mr. Klein): I show you Plaintiff's Exhibit 52 and ask you whether the small paper on top is the application for stock?

A. That is right, sir.

Q. And that the larger certificate is the certificate for the number of shares of stock?

A. That is right.

Q. And these were the forms used in effect by your Association in 1952?

A. That is right, sir.

Mr. Klein: I would like to offer Exhibit 52 into evidence.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Klein): Now, I see on Exhibit 52 that the certificates (434) will not be transferred unless and until the transferee has made proper application for membership and has been accepted as a member of the undersigned. Has any such application for transfer ever been refused by your association?

A. Not to my knowledge.

Q. And has any person who has tendered funds and sought to become an investor ever been denied the right so to do?

A. Yes.

Q. Many instances?

A. No.

Q. One instance?

A. One anyway.

Q. Just one?

A. In my particular—

Q. (Interposing): And what was the reason for that?

A. He wanted optional savings investments, and he was a constant withdrawer and habitually drunk, and there was some question of ownership between him and his spouse; so I just rejected it.

Q. Looked as though you would get into some legal complications?

(435) A. Yes.

Q. But other than that, there is not a single instance that you know of where any person attempted to become an investor where he was denied the right to become an investor?

A. That is right, sir.

Q. And when a person becomes an investor, and I am talking about 1952 and prior, did you require him to become a member?

A. That is right.

Q. And what duties and liabilities were entailed by his becoming a member at that time, or what rights and liabilities, I should say?

A. His rights, he would be a member as owner of that particular share of the business, of the association.

Q. Was there any liability entailed?

A. No, not that I know of.

Q. None entailed at all. And was it required that any investor should become a borrower of the association? Was that a requirement of investment, that he become a borrower from the association?

A. No, sir.

Q. And was it a requirement of any borrower that he become an investor?

A. No, sir.

Q. In other words, a man could be an investor without being (436) a borrower, and conversely, he could be a borrower without being an investor in shares?

A. As I understand.



Q. That is correct. Once you get your capital by attempting or endeavoring to get as many people to invest in your association as you can, is it not true that the main purpose of your business is to make mortgage loans?

A. That is right.

Q. And in 1952 what type of mortgage loans did you make?

A. Real estate mortgage loans.

Q. Real estate mortgage loans. And did your advertise, tell people that you were seeking their mortgage loan business?

A. I am sorry, but I will have to state no, sir, we did not.

Q. You did not. You did have something in the telephone book about that, though, didn't you?

A. Oh, that is possibly so, but I was thinking of monthly publications. We did not advertise for mortgage loans.

Q. But you did go out and try to get mortgage loans?

A. No, they came to us. We were more interested in getting investors, sir.

Q. You also were interested in getting mortgage loans to invest your money in so that you could pay dividends, weren't you?

A. Yes.

(A photostatic copy of an advertisement was marked Plaintiff's Exhibit No. 53 by the reporter.)

(437) Q. In other words, unless you in turn loaned your money out, your investors would not earn any dividends, would they?

A. No, it was a question of identification of the business mainly.

Q. Well, you endeavored to get as much mortgage business as you could, did you not?

A. As much as our capital permitted.

Q. As much as your capital permitted?

A. Yes.

Q. And you were out trying to get more capital all the time, as you just said; that was what you were interested in, because the more capital you got, the more money you could loan out secured by mortgages?

A. That is correct.

Q. Now, I will show you a photostatic copy of what purports to be an advertisement in the Marshall telephone directory, marked Plaintiff's Exhibit 53, and ask you if in the year 1952 the Marshall Savings & Loan Association had an advertisement in that telephone book of that character?

A. That is wrong, sir.

Q. What is that?

A. This was since we were insured. This was for 1957 or '58.

Q. Did you have any in '52?

A. I do not know. I would have to check back, sir.

(438) Q. Generally you as manager of your association endeavored to make it known in the community that your association was interested in making mortgage loans? That was your business, wasn't it?

A. Yes.

Q. (By Mr. Klein, continuing): In seeking mortgage loan business in 1952, did your association seek mortgage loans from borrowers of all economic and income class levels?

Mr. Dexter: Your Honor, he has already answered (439) that question.

Mr. Klein: I do not think so, sir. I asked him about investors' shares, not about mortgages.

The Court: That is my memory, Mr. Dexter. The other questions did relate to investors.

A. I can answer that by saying there was no partiality shown to anyone who came in to interview regarding a loan.

Q. (By Mr. Klein, continuing): And in a community such as Marshall, you knew most of your borrowers personally, didn't you?

A. Definitely, sir.

Q. And would you say there were a number of professional people who were borrowers from your Association?

A. Not—there were some, sir.

Q. And some business people?

A. Some, sir.

Q. Were there any businesses themselves borrowed money?

A. No, sir—no, sir.

Q. Were there any finance companies or builders?

A. It is possible, sir, that there was.

Q. Some what?

A. Builders.

Q. People engaged in the building business?

A. That is right, sir.

Q. Now, to switch back for a minute to investors, did you have (440) as investors business people?

A. Yes, sir.

Q. And professional people?

A. Yes, sir.

Q. And corporations?

A. Not in 1952 that I recall, sir.

Q. You don't recall. Any trustees of estates?

A. That opened the account?

Q. Yes, sir.

A. No, sir.

Q. You don't recall any?

A. There was none that opened an account.

Q. Any funds of any kind, trustees of various funds, or charitable organizations?

A. There were funds—that the original shareholder had died, and the executor was—

Q. (Interposing): Continued?

A. Yes, that is right; and there were some charitable.

Q. Any city, state organizations invest?

A. City, state, there was—yes. Could I elaborate on that?

Q. Surely.

A. The only ones I can think of that were city would be city schools, and those were scholarship funds.

Q. Yes.

A. They were not funds of the taxpayers; they were funds.

(441) Q. (By Mr. Klein, continuing): Do you recall how many mortgages were obtained by your association in the year 1952?

A. The bookkeeper checked them the other night and she said 53.

Q. And would you say that the total amount of such mortgages aggregated in excess of \$218,000 for the year 1952 of new mortgages taken?

A. I can't say; I didn't total them.

Q. Would that be the approximately amount?

A. That would be an approximation, yes, but I cannot say definitely on it.

Q. And your reports, Exhibits 37-H and 37-H-1, show the amount of mortgages taken in each of those fiscal years, do they not?

A. I think it does.

(442) Q. Yes. And would you indicate the size of the mortgages you took in 1952; do you recall the maximum amount?

A. The maximum amount that we could make at any time was \$10,000, without a formal approval of the Board; that is, through my office.

Q. Then you could, with the approval of the Board, take mortgages of greater amount?

A. That is right.

Q. And there were such mortgages taken, were there not?

A. I cannot answer that, sir.

Q. You cannot say one way or the other?

A. No, sir.

Q. You just don't recall?

A. I would have to check.

Q. Yes, sir. Now, what types of mortgages did you take, Mr. Andersen?

A. All real estate, sir.

Q. All real estate. Did you take any FHA mortgages in 1952?

A. No; all conventional.

Q. All conventional; and did an applicant for a mortgage have to file an application form?

A. That is right, sir.

Q. Do you have a copy of such application form?

A. (Producing document.) Yes, we used two forms in 1952.

(443) (The application forms were thereupon marked for identification by the Reporter as Exhibit 54.)

Q. (By Mr. Klein, continuing): I will show you a group of documents consisting of five sheets of paper, and ask you whether these were the application forms for loans used by your association in the year 1952?

A. This (indicating) is not an application; I don't know how that got in there.

Q. The last sheet is not?

A. No.

Q. All right, we will take it off and then we will have four sheets?

A. That is right, sir.

Q. These four sheets were the forms used.

Mr. Klein: I should like to offer Exhibit 54 in evidence.

Mr. Dexter: Exhibit 53 was not offered.

The Court: The last one I have is 52.

Mr. Klein: Exhibit 53 was marked, sir, but the witness did not identify it as being within the period, so we did not proceed further.

The Court: Very well.

Mr. Dexter: I have no objection except the continuing objection, except to indicate that Exhibit 54 was not in use until July of 1952. It does not cover the entire year 1952.

(444) The Court: Received.

Q. (By Mr. Klein): And in determining whether to grant a loan or not, what was the basis, the security of the mortgage of the property?

Mr. Dexter: Well, Mr. Klein, you asked him the question. Would you let him answer it?

Mr. Klein: O. K. I will do so, sir. I think your objection is very well taken—the first one, though, sir.

A. Collateral and the individuals involved.

Q. (By Mr. Klein): What do you mean by "collateral," sir?

A. The real estate offered as collateral.

Q. And you say the individuals involved. What did you mean by that, looking at your form?

A. Their stability and as individuals with whom you wish to do business, sir.

Q. Did you get a financial statement from them?

A. We run a credit report, sir, on most cases.

Q. Determine the net worth and income power?

A. Mostly income power and what we think they are worth.

Q. And did you, in making your mortgage loans, operate conservatively or not conservatively in '52?

Mr. Dexter: Your Honor, I would suggest that those terms are ambiguous. Unless Mr. Klein wants to define what he means by the terms, I don't think the witness (445) is qualified to answer.

Q. (By Mr. Klein): I will qualify it in respect to appraisal, security of the property you took as mortgage to secure your loan. Were you conservative or not conservative?

A. I would say we were more conservative than the FHA appraisals.

Q. And how much of a valuation would you require as security for a loan? In other words, what would the appraisal have to be in order to secure the loan, in percentages?

A. Legally we could loan up to 75 per cent of the appraisal.

Q. What was your practice?

A. Our practice in '52?

Q. Yes, sir.

A. I can't recall. I think they ran around 60 per cent or 57, somewhere in that neighborhood.

Q. Of—

A. (Interposing): Of the appraised value.

Q. In other words, the mortgage would be between 57 and 60 per cent of the appraised value?

A. Now, that is an estimation.



Q. Yes. And what interest rate did you charge in '52?

A. It was a straight six per cent monthly deduction.

Q. Six per cent monthly deduction. And it was amortized on equal monthly installments?

A. That is right, sir.

Q. And what was the average—I say average—term of your (446) mortgage?

A. Eleven years, six months.

Q. Some were less and some were more?

A. No. That is the amortization schedule.

Q. You just had a fixed amortization schedule of eleven years and six months.

And when you received a mortgage from a borrower, was it your practice to promptly record that mortgage or not?

A. That is right, sir.

Q. Well, you did record it?

A. Yes, sir.

Q. Promptly?

A. Yes, sir.

Q. With the Register of Deeds?

A. That's right.

Q. Now, as a man experienced in the savings and loan business in Marshall, you knew, did you not, of other people who were engaged in the business of loaning money secured by mortgages on homes and otherwise?

A. That's right, sir.

Q. And what institutions do you know in Marshall in '52 were engaged in that business?

A. Institutions in Marshall?

Q. Yes.

A. Well, aside from insurance companies, the Michigan National (447) Bank, sir.

Q. So the insurance companies and the Michigan National Bank were also in the business of loaning money secured mortgages on homes?

A. That is right.

Q. And do you know from your experience in the business in '52 whether or not the Michigan National Bank loaned money on the same types of homes that you loaned money on?

A. Well, they did loan money on real estate, that is right, sir.

Q. The same type of homes you loaned money on?

A. Yes, I believe so.

Q. And in the same locality and area?

A. I would say so.

Q. Did your association do any other business besides the mortgage business?

A. The association did not, sir.

. . . . .

(448) Q. Did you sell checks of any kind?

A. No, sir.

Q. Do you have Christmas and vacation savings plans?

A. No, sir.

(Photographs were marked Plaintiff's Exhibits 55-A and 55-B by the reporter.)

Q. I will show you some photographs; one has been marked Plaintiff's Exhibit 55-A and the other Plaintiff's Exhibit 55-B, and I ask you if you would say the structures of which they are photographs?

A. That is our association, sir.

Q. That is 55-A you are pointing to?

A. Yes.

Q. And 55-B is what, sir?

A. The Michigan National Bank, sir, in Marshall.

Q. And how far are they from one another?

A. Two blocks and a half.

Q. You have a pretty nice looking structure there, do you not?

A. I have an opinion, I guess.

Q. What is your opinion?

Mr. Dexter: Your Honor, the exhibit speaks for itself?

A. We are not as flamboyant or as great as the Michigan National; (449) let's put it that way.

Q. Pretty nice-looking building?

A. Not compared to your bank, sir.

Q. Would the inside have counters like a bank? ☒

Mr. Dexter: I object.

A. We have counters, wooden counters, sir, not marble.

Q. Showing your conservative policy?

A. Definitely, sir.

Q. But you do have counters and the appearance of a bank?

A. Not the appearance of a bank. We are very informal, sir.

Q. Very informal?

A. Yes, sir.

Mr. Klein: Well, that is a very nice way to be, and I appreciate your testimony, sir.

I would like to offer these exhibits into evidence, sir, 55-A and 55-B.

Mr. Dexter: No objection, except the continuing one, your Honor.

The Court: Received.

. . . . .

(451)

*Cross Examination*

By Mr. Dexter:

Q. May your shares be assigned?

A. They may, sir.

Q. May they be assigned without the consent of the Association?

A. No, sir.

Q. May these shares be redeemed or repurchased at the option of the Association?

A. I believe it is in the by-laws. I couldn't answer that.

Q. In other words, if that is provided for in the by-laws, that is what would be done?

A. You mean repay them?

Q. That is right, repurchase them.

A. That is right, sir.

Q. Do you reserve the power to refuse anyone's wish to become a shareholder?

A. No, not necessarily.

Q. Don't you have that power reserved?

A. Oh, I see what you mean. I didn't understand you.

Q. Do you reserve the power to not permit a person to become a shareholder?

A. That is right.

Q. And that has been provided for in your by-laws?

A. That is right, sir.

Q. And it is part of your actual practice to go through that (452) actual process of accepting a member?

A. Yes, to evaluate them.

Q. And to determine whether you are going to accept them or not?

A. Yes.

Q. And I think you stated in one instance at least that you could recall that you didn't accept a member?

A. That is right, sir.

Q. Now, will you describe the nature and category of your assets and liabilities as of 1952? I am not interested in the numerical amounts.

A. You want me to enumerate them as they go through?

A. Well, describe the nature of each category of assets and liabilities that the Association has.

A. Assets, we had first mortgage loans and share loans, stock in the Federal Home Loan Bank, the other investors' securities, also a time deposit with the Michigan National, the office building and the furniture and equipment.

Q. What cash reserves and deposits are you required to keep?

A. I can't quote you the exact percentage on that.

Q. Where would that be found? Where would you find the information?

A. On the books, in the law, same as the loan association?

Q. In other words, you follow the requirement of the law there?

A. Yes, sir.

Q. And that is the kind of reserves deposits that you keep?

(453) A. Yes, sir.

Q. Do you maintain checking accounts for your customers?

A. No, sir.

Q. Do your shareholders have the right under the by-laws to withdraw their money on demand?

A. Under the by-laws, upon thirty days, if approved by action of the board of directors.

Q. They cannot get it on demand, and they cannot walk in and withdraw it?

A. No; we have the restrictions, sir.

Q. That is thirty days, and subject to approval by the Board?

A. That is right.

Q. Are your shareholders considered creditors by your association?

A. Yes, they would be creditors, wouldn't they? They are not creditors to the Association, no.

Q. Are they creditors of your Association?

A. No.

Q. Where do you keep the cash you are required to have on hand for business needs?

A. In the Michigan National Bank, sir.

Q. And can you state the amount of that money you had in the year 1952?

A. According to this statement here—

Q. (Interposing): That is, according to Exhibit 37-H?

(454) A. \$34,548.77.

Q. That would be deposited with the Michigan National Bank?

A. That is right.

Q. Do you keep it in a regular commercial account with the Michigan National Bank?

A. Yes, sir.

Q. Do you maintain any other kinds of deposits in commercial banks?

A. In 1952, sir?

Q. Yes.

A. No, sir.

Q. Did you at any time prior to 1952?

A. No, sir.

Q. Do you do any other business with commercial banks?

A. As of now you are speaking?

Q. As of 1952?

A. No, sir.

Q. Must a person be a member in order to obtain a loan?

A. Yes, sir.

Q. What percentage of persons who borrow from your association are members?

A. They all file a membership application for borrowing.

Q. So all your borrowers are members of the Association?

A. That is right, sir.

Q. And you have a right to receive or reject members?

(455) A. That is right, sir.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on farm and residential property?

A. Farm would be a small percentage; I am estimating about twelve per cent.

Q. On farm and residential?

A. Oh, all of it, a hundred per cent; I thought you meant farms.

Q. No, both of them. A small percentage of that is on farms?

A. Yes.

(456) Q. Do you know what the average amount of the loans are that you make?

A. In 1952, it is, now?



Mr. Klein: I think it will show on your report; take the total number of mortgages and divide it by the number made.

A. Somewhere around \$6,000; somewhere in that neighborhood.

Q. (By Mr. Dexter, continuing): Do you make any straight mortgage loans?

A. Straight real estate mortgage loans, yes, sir.

Q. Do you make any open-end type of loans?

A. Yes, sir.

Q. This relates to the year 1952, you understand, all these statements?

A. Yes. The question on that in 1952 we inaugurated the open-end type, but I don't know if we made any at that time.

Q. I see.

A. It is possible we did.

Q. You could check your records if we deem it necessary to indicate that?

A. Yes.

Q. What provisions are made in your mortgages concerning prepayment?

A. Prepayment?

A. Yes.

(457) A. There is no penalty on prepayment.

Q. No penalty whatsoever on prepayment. Then would you consider them more or less liberal than prepayment clauses used in bank mortgages in your locality?

A. I don't know the bank clauses, sir.

Q. I see. As I understand it, you had no FHA or VA mortgages in 1952?

A. That is correct.

Q. What would you do with such request for such type of loan?

A. Refer them to the Michigan National Bank.

Q. Do you sell or assign any of your mortgages?

A. No, sir, not since I have been there.

Q. Once the mortgage and mortgage note are signed, how are the funds then made available to the borrower?

A. They are—as of the date of closing, by checks.

Q. And check drawn on—

A. (Interposing): Michigan National Bank.

Q. Check drawn on the Michigan National Bank is the way you transmit the money to the borrower?

A. That is right, sir.

(458) Q. Stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year?

A. In 1952 the mortgage money market was low, as far as the amount of capital we had.

Q. In other words, there was more demand for mortgages than you had—

A. (Interposing): Money.

Q. (Continuing)—money to lend?

A. That is right, sir.

Q. That would be a reason, then, why in 1952 you were not interested in trying to advertise the fact that you made mortgages?

A. That is right.

Q. What you needed was more money to fill the demand for mortgages that you already had?

A. That's right, sir.

Q. Is that one reason why it wasn't essential for you to get into the FHA and VA type mortgage?

A. That is right.

Q. In other words, in the Marshall area, the area you service, did the demand for mortgage money on homes exceed that which could be supplied by your association

and other building and loan associations and banks in the area?

A. I would say definitely yes.

(459) Would you describe the nature and extent of governmental supervision and the governmental agencies supervising you?

A. In 1952, it was the Michigan Department of State, the Building & Loan Division.

Q. The Building & Loan Division of the Secretary of State of the State of Michigan?

A. Yes, sir.

Q. Are you a member of the Federal Reserve System?

A. We are a member of the Federal Home Loan Bank of Indianapolis, sir.

Q. But not a member of the Federal Reserve System?

A. No, sir.

Q. Are you a member of the Federal Deposit Insurance Corporation?

A. Not in 1952.

Q. Are you permitted to borrow from the Federal Reserve System?

A. From the Federal Home Loan Bank of Indianapolis.

Q. But not from the Federal Reserve System?

A. No, sir.

Q. Are you a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What agency of the Government, if any, insures your stockholders or shareholders?

A. At that time none, sir.

Q. 1952 you did not have any?

A. No, sir.

(460) Q. What provision and procedure is made in your by-laws for paying off investors in the event of emergency or insolvency?

A. As far as the association is concerned?

Q. That's right.

A. The only provision—I don't know. Do you know?

Mr. Mackey: I can't answer that.

Q. (By Mr. Dexter): Would that be provided for in your by-laws?

A. Yes, sir, it is.

Q. The practice you would follow would be the practice required in those by-laws?

A. Yes, sir.

Q. But you don't know precisely what that procedure is?

A. No, I do not.

Q. In our little discussion about your principal place of business, the picture introduced as the exhibit is your sole place of business?

A. That is right.

Q. Well, now, as I understand, it is very modest?

A. It is. It is a very old building, one of the first ones, I believe, in Marshall.

Q. How long have you been in that building?

A. I think they moved in there in '32. I can be wrong, but I think they moved in that building in '32.

Q. When did the Michigan National Bank come into that area?

A. Before my time. I couldn't tell you.

(461) Q. How many employees do you have?

A. One bookkeeper, an assistant—parttime bookkeeper.

Q. And yourself?

A. And myself.

Q. Do you know how your Federal income taxes are computed?

A. We have an auditor to do it, sir.

Q. Would you be familiar with the method used?

A. Just to the extent that I have studied the guide, is all, and he is the man that keeps up on it.

Q. Would you know whether your bad debt reserve for Federal income tax purposes is computed in the same manner as banks?

A. No, our bad debts is all included in our reserves. That is all in our reserves.

Q. You don't know how that is treated for Federal income tax purposes as compared with banks?

A. No. It is 12 per cent or something. I don't know the exact wording.

Q. Do you know the types and amount of taxes paid by your association during 1952, and to the governmental agency to whom it was paid?

A. The only taxes we paid was real estate property taxes in 1952.

Q. Did you pay any personal property taxes?

A. No, sir.

Q. Did you pay any intangibles tax?

A. Intangible tax to the State of Michigan, yes, sir.

(462) Q. What was the market value of your shares in 1952?

A. \$100.

Q. 100 per cent on the dollar?

A. Yes, sir.

Q. No variation in that whatsoever?

A. None whatsoever.

. . . . .

(463) Q. Has your association prior to the year 1952 had any direct connection with personnel of the Michigan National Bank?

A. Yes, sir.

Q. Would you state what that connection is or was?

A. When I came in the association, the senior vice-president and manager of the Michigan National Bank was a member of our Board of Directors, sir.

Q. And in that time, what was the relationship of your business between the business of the Michigan National Bank?

Mr. Klein: What do you mean by "relationship"?

A. We were both in the same—

Mr. Klein (interposing): Just a moment, sir. What do you mean by "relationship," Mr. Dexter?

Mr. Dexter: I mean—let me ask you this:

Q. (By Mr. Dexter): During that period, did your association take the kind of loans that the Michigan National Bank didn't particularly want?

A. I didn't quite understand that. Do you mind?

(464) Q. As I understand it, for a period prior to 1952, an executive of the Michigan National Bank was on your board of directors?

A. That is right.

Q. Let me ask you this. Did the fact that he was on your board of directors have any effect on the type of business your association did?

A. No, sir.

Q. Did that put an official of the Michigan National Bank in a position to know the complete business of your association?

A. Yes, sir.

Q. What kind of power in regard to your association would such official have?

Mr. Klein: Did he have, not would he have.

Q. (By Mr. Dexter): Did he have?

A. As a member of the board, he had power of assisting in making policies for the association, yes, sir.

Q. How many members of the board were there in that period of time?

A. Twelve, sir.

Q. When did this person leave the board of directors?

A. 1948, January.

Q. As I understand, before you would accept any shareholder or make any loans to any individual that that person had to be a member of the association?

A. That is right, sir.

(465) Q. That is specifically provided in your by-laws?

A. That is right, sir.

Q. So you as an association are permitted by law to refuse—

A. (Interposing): That is right.

Q. (Continuing): —anyone becoming a shareholder with your organization?

A. That is right.

Q. As I understand, in 1952 there was a limit to the amount of shares that any one person could get; you don't know whether that was \$10,000 or \$20,000?

A. I couldn't answer that. I think it was ten.

Q. Could you check to find out what that was?

A. Yes, I can.

Q. What was the average amount that a shareholder held in your association during 1952?

A. I couldn't answer that.

(466) Q. (By Mr. Dexter, continuing): 201 members you had on your June 30, 1952 balance sheet?

A. 201 members.

Q. Yes.



(467) A. Somewhere, an approximation of twenty-five hundred to three thousand—about twenty-seven hundred.

Q. (By Mr. Dexter, continuing): That is on your June 30, 1952 balance sheet, Exhibit 37-H?

A. Yes.

Q. All right. What would the average be, as of June 30, 1953?

A. 335—approximately a little better than two thousand, sir.

Q. I see. All right. Now, in reference to Exhibit 37-H and Exhibit 37-H-1, is there any information on there that indicates the amount of mortgages taken in the calendar year 1952, or does it just contain totals?

A. I think it indicates the number of mortgages made.

Q. Within the particular calendar year?

A. Within a particular period, yes; six months, and so forth; this is every six months.

(468) Q. Does it indicate the amount of new mortgage business?

A. No, no.

Q. It just indicates totals?

A. Totals, sir.

Q. The same would be true in reference to Exhibit 36-G, your monthly statement of December 31, 1952?

A. That exhibit is the total portfolio of the amount of the mortgages, but it also indicates the number of loans made too.

Q. But not the amounts?

A. No.

Q. All right.

. . . . .

A. (Interposing): Not broken down. For example, there are two loans there which total \$9,500; one could have been for \$6,000.

Mr. Klein: It shows the total made during the month?

A. Yes, but not for each loan.

Q. (By Mr. Dexter, continuing): It does not show the total for the calendar year 1952?

(469) A. No.

Q. The month or amount?

A. No.

Q. Are your shares traded over the counter?

A. Please explain.

Q. Are your shares traded over the counter, sold on the stock exchange?

A. No, sir.

Q. Or sold in any other way of a comparable nature?

A. Not that I know of, sir.

Q. In addition to mortgage loans, do you loan on your own shares?

A. Yes, sir.

. . . . .

*Re-direct Examination*

By Mr. Klein:

Q. Looking at Exhibit 36-G, Mr. Anderson, the part under "Supplemental information," relating to mortgages; that does show, does it not, the total amount of mortgages made in the month of December, 1952, and the total amount of mortgage (469½) money loaned by the Association in that month?

A. In that month, that is right.

(470) Q. And looking to Exhibit 37-H, on page 11, is it not true that there is a tabulation from 1 to 5 on page 11 showing the total number of loans made for the

fiscal year ended June 30, 1952, as aggregating 68 mortgages and \$202,968 total?

A. That is right.

Q. Those are new mortgages and loans made during that period?

A. That is right.

Q. And similarly on page 5 of Exhibit 37-H-1, there is a tabulation showing that during the fiscal year from July 1, 1952, through June 30, 1953, there were a total of 81 new mortgage loans made for an aggregate of \$262,031?

A. That is right.

Q. Now, looking at those exhibits and tabulations, I see for the year 1953, ending June 30, 1953, 18 were made for construction.

A. That is right.

Q. That is of homes, I suppose?

A. Yes, sir.

Q. Thirty-two for the purchase of homes?

A. That is right.

Q. Seven for the refinancing of mortgage loans held by another lender?

A. That is right.

Q. In that connection, did you ever during that period refinance (471) a loan held by the Michigan National Bank?

A. It is quite possible, sir.

Q. Did they ever refinance loans within the year '52 held by you?

A. That is very possible.

Q. And under item 4 there were 6 loans for additions, alterations, repair or reconditioning?

A. That is right.

Q. Then under item 5 there is a heading, "Loans for all other purposes." Eighteen loans of \$54,000. What would those other purposes be, sir?

A. Well, people that borrow money to buy cars, to buy other real estate, and things like that, for investment purposes. I would have to check.

Q. Other than purchasing of their own homes?

A. Yes, that is right.

Q. Now, there was some inquiry made of you by Mr. Dexter about membership. Did a person have to be a member when you sought his investment in shares?

A. I didn't seek their membership.

Q. No, but I just want to clarify this. When you advertised for investments, did the person to whom—or from whom you solicited have to be a member at the time?

Mr. Dexter: Your Honor, he has testified that he didn't solicit, and he didn't advertise.

(472) Q. (By Mr. Klein): Did you endeavor to get investment shares in 1952?

A. Yes.

Q. And did those persons whom you approached or who came to you have to be members before they made investments?

A. No, sir.

Q. They only became members when you accepted their investment?

A. They became members at the time of the acceptance.

Q. You don't recall rejecting anyone who sought investments, with one exception?

A. That is right, sir.

Q. And similarly any person from whom you sought or who came to you for mortgage loans, that person did not have to be a member prior to his taking a loan?

A. He applied for a membership, sir.

Q. When he applied for the loan?

A. When he applied for an application for a membership.

Q. In other words, if he got a loan, he became a member?

A. That is right.

Q. But he did not have to be a member until he got the loan?

A. That is right.

Q. And you never rejected any mortgage application for that account?

A. Well—

Q. (Interposing): You rejected it because he didn't qualify?

(473) A. The standards and so forth, didn't qualify.

Q. Now, FHA loans and VA loans in '52 were for a period of 20 years or more, weren't they?

A. I believe so. I do not know too much about it.

Q. And isn't that one of the reasons your association didn't take those loans in 1952, because they were for too long a period?

A. No, sir.

Q. Why didn't you take the loans?

A. Because we do not have the money, sir. We could use our money conventionally.

. . . . .

(474) Q. (By Mr. Klein): Did you have a preference as to conventional mortgages in '52 as contrasted with taking FHA or veteran's mortgages in '52?

A. A preference? No, sir, our policy was conventional mortgages, sir.

Q. Did you consider whether you should take FHA mortgages?

A. We did not, sir, any time.

Q. Never even considered it?

A. We did not consider it, sir, no, sir.

Q. Did you know that legislation had been passed by the Congress of the United States providing for FHA and veteran's loans to encourage home building and home ownership?

A. That is right, sir.

Q. But your association didn't choose to follow that policy?

A. It was never brought up as a matter in the minutes of the board, sir.

Q. Was it considered by you as manager of the association?

A. Not as anything to present to the board, sir.

Q. How about you as manager, you made mortgages up to \$10,000 (475) without the board.

A. But I couldn't say without the board approving—

Q. (Interposing): This is under ten. Did you consider FHA mortgages as management?

A. Oh, no.

Q. Now, in 1952, did you borrow any money from the Federal Home Loan Bank?

A. Why didn't you have me bring the books? I would have to go back and find out.

Q. Exhibit 36-A would show whether you borrowed money, wouldn't it?

A. Yes, we did.

Q. How much did you borrow?

A. Sixty-six thousand, sir.

(476) Q. Was that the limit of your borrowing from the Federal Home Loan Board?

A. No, sir.

Q. You could have borrowed more money in 1952 than you did?

A. That is right, sir.

Q. And you could have used that borrowed money to make more mortgages, couldn't you?

A. Yes, sir.

Q. But you elected not to do so?

A. That's right, sir.

. . . . .

(477) Q. (By Mr. Klein): Do I understand your association paid a real (479) estate tax in 1952?

A. On our building, yes, sir.

Q. That is an ad valorem real property tax?

A. Yes, sir.

Q. Based upon the assessed valuation?

A. That is correct, sir.

Q. And you paid no personal property tax?

A. That is right, sir.

Q. You paid the intangible tax?

A. Yes, sir.

Q. Imposed by the State of Michigan?

A. That is right, sir.

Q. And you paid the annual privilege fee to the Secretary of State?

A. I am assuming that, yes, sir.

. . . . .

(480)

*Re-cross Examination*

By Mr. Dexter:

Q. Mr. Anderson, is your association conducted in accordance with the statutes in your by-laws?

A. It is, sir.

Q. So that your purposes, your objectives, what you do, would be set forth there?

A. That's right, sir.

Q. Now, in reference to Exhibits 37-H and 37-H-1, neither one of those exhibits would indicate the money actually lent for the (481) calendar year 1952?



A. I don't think they do.

Q. Are those fiscal year reports?

A. They are for the period—this one is for the end of July. Yes, those are the fiscal year reports, that's right.

Q. There is no information broken down there in terms of money actually lent for the calendar year 1952?

. . . . .

A. No, it doesn't show for the one year, the fiscal year.

Q. (By Mr. Dexter): I mean for the calendar year 1952?

A. No, sir.

Q. Now, in reference to the miscellaneous borrowings, would that include borrowings of your shareholders on their own shares?

. . . . .

(482) A. I would like to look at that report again.

Q. (By Mr. Dexter): Yes, (handing report to the witness).

A. No. Where I reported that there were 81 loans made totaling so much money, and the question was miscellaneous loans, which I assume means loans for other purposes—

(483) Q. Right.

A. I don't believe that includes share loans.

Q. As I understand, apparently there is some confusion in reference to your testimony in regard to this membership.

Would you explain the sequence of membership versus loaning money, and membership versus becoming a shareholder?

A. An individual to become a shareholder has to file a membership card and sign it at the time that he wants to make his investment.

Q. Is that done before his investment is accepted?

A. Actually, yes, that is right.

Q. Is the same sequence followed in regard to membership for borrowing purposes?

A. For borrowing purposes he signs a signature card and a membership card.

Q. He is accepted as a member before he is lent money?

A. That is right, sir.

Q. And he is accepted as a member before he is permitted to make an investment?

A. Yes; theoretically, we always do that.

Q. That is what your by-laws require?

A. Yes.

Mr. Klein: You said "theoretically." In fact, (484) he does not become a member until he gets his loan, does he?

A. Well, he applies for membership. I see, I do not want to lie—

Mr. Klein (interposing): I know you want to give it to us straight.

A. When a loan is processed, after he applies and is accepted as a borrower, he then becomes a member and signs a membership card, and the loan is made at the same time.

Mr. Klein: And the same is true when he becomes an investor, a man becomes an investor?

A. Yes, sir, that is right.

. . . . .

(485) PARKER, ROLAND E., was thereupon produced as a witness on behalf of the plaintiff, and, after having been first duly sworn, testified as follows:

*Direct Examination.*

By Mr. Klein:

Q. Mr. Parker, what is your occupation?

A. I am a savings loan executive.

Q. Of what savings association?

A. First Federal Savings and Loan Association of Flint.

Q. And what is your position with that Association?

A. President and managing officer.

Q. How long have you held that position, Mr. Parker?

A. I have been the managing officer since December, 1944; president since 1952.

Q. And were you employed by the Association prior to that time, sir?

A. No, sir.

Q. And when was your association incorporated, Mr. Parker?

A. 1934.

Q. 1934. And, you have a copy of your charter and by-laws with you, sir?

A. Yes, sir.

Q. May we have them and have them marked, sir?

A. The present charter and the charter immediately preceding the (486) one in 1950.

Q. Yes, I will have it marked—was this (indicating) the one in effect in 1952?

A. Yes, sir.

Q. And the by-laws also?

A. Yes, sir.

Q. (By Mr. Klein, continuing): And, Exhibit 56-A is a photostatic copy of the charter as it was in effect in 1952?

A. Yes, sir; it is certified by our secretary.

Q. And Exhibit 56-B is a printed copy of your by-laws as they were in effect in 1952?

A. Yes, sir; that is also certified.

Mr. Klein: I should like to offer Exhibits 56-A and 56-B in evidence.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Klein, continuing): In 1952, were you president and general manager, did I understand?

(437) A. Yes, sir.

Q. And in that capacity you had general executive management of the affairs of Association, subject to the overall control of the directors?

A. That is right, yes, sir.

Q. But you were the executive chief administrative officer?

A. Yes, sir.

Q. And you carried on the day-to-day business, such as the loan business, the taking of shares—

Mr. Dexter (interposing): Your Honor—

Mr. Klein (continuing): Well, may I ask what your duties entailed? I thought I would save time. I beg your pardon, I will go slowly and tediously.

Q. (By Mr. Klein, continuing): What did your duties entail, sir, as president and general manager of the Association in 1952?

A. Well, as managing officer, my duties were administrative; making assignments to staff members to carry

out the ordinary functions of the operation. The staff members were all responsible to me, and I was responsible to the Board of Directors.

Q. How about the books and records of the corporation?

A. The books and records, I was responsible for them, but one of the staff members did the actual physical work.

Q. Right. Did you bring with you the published annual reports (488) of the Association for the periods from December 31, 1947 through 1952?

A. Yes, sir, I have a photostatic copy, which is also certified.

Q. Yes, right, sir.

A. For the various years.

. . . . .

Q. (By Mr. Klein, continuing): I will show you documents which have been marked Exhibits 57-A through 57-F, inclusive, and purport to be "Statements of Condition," of your Association for the periods December 31, 1947, each year, consecutively, through December 31, 1952, all as at December 31 of each of those years, is that correct?

A. That is correct.

Q. And were these reports published in the newspapers?

A. Yes; there is a copy of the newspaper published report.

Q. Yes. And, were they published pursuant to any statutory or regulatory requirement?

A. There was a time when there was a regulation; I think there (489) no longer is; we still publish them.

Q. During this period in question?

A. I think that there was a regulation at that time.

Q. Yes, sir. And, these reports were prepared and published—were these reports prepared and published in the regular course of your business, and was it the regular course of your business to make such reports?

A. Yes, sir.

Q. And do these reports truly and correctly reflect the financial condition of your Association for each of those periods as at December 31, as entered upon the books and records of your Association for that period?

A. Yes, sir.

Q. And, Mr. Parker, if the Attorney General of the State of Michigan, or his staff, wish to check your books and records at your office, or elsewhere, as the Judge directs, to determine the correctness of these reports, 57-A through 57-F, inclusive, would you be agreeable to having him do so at a reasonable hour?

. . . . .

(493) Mr. Klein: Exhibits 57-A through 57-F, inclusive, are offered in evidence.

The Court: And they are received conditionally, (494) and subject to the right of the attorney general to insist that the books and records be received in evidence and he have the opportunity to inspect them following such subpoena.

Q. (By Mr. Klein): I show you a document marked Exhibit 58 and ask you what that is, sir.

A. That is the annual report for the Home Bank of Indianapolis.

Q. Made by your association?

A. Yes, sir.

Q. For what period?

A. For the year 1952, fiscal year ending 1952.

Q. And does that bear your signature?

A. Yes, sir.

Q. And your oath. It was notarized as being true and correct?

A. Yes, sir.

Q. And was this filed with the Home Loan Board at Indianapolis pursuant to requirement of the Home Loan Statute?

A. With the Home Loan Bank.

Q. Home Loan Bank?

A. Yes, sir.

Q. And was this report prepared by the association in the regular course of business, and was it the regular course of business for the association to prepare and file such report?

A. Yes, sir.

Q. And does the report truly and correctly reflect the transactions (495) therein indicated of the association and the financial condition, as appears from the books and records of the association for the period in question?

A. Yes, sir.

Mr. Klein: And I make the same statement about the books and records. I now offer Exhibit 58 into evidence.

Mr. Dexter: We would object, of course, on our continuing objection, plus the fact that they are not the best evidence, and I assume that the court's statement in regard to the admission—

The Court: The ruling with reference to Exhibits 57-A to F will apply to this in the same manner.

(496) Q. (By Mr. Klein): Do you know what the original capital of your association was when it was first organized, sir?

A. Well, I was not an employee, but they started from nothing in 1934. Is that the date you mean?



Q. How much was paid in originally?

A. I can't answer that. I was not an employee.

(497) Q. (By Mr. Klein): Do you know whether your association has had a substantial growth from the date of its incorporation to December 31, 1952?

A. Yes, sir, it has.

Q. Do you know how much the growth has been in terms of millions of dollars of capital?

A. Yes, sir. It grew from nothing to eight million plus, in this statement as shown, \$8,011,097.44.

Q. Those were total assets, were they not?

A. Yes, sir.

Q. And on December 31, 1952, you had total investment in shares of \$6,516,000, in round figures?

A. Yes, sir.

Q. And on December 31, 1952, you had first mortgage loans in the aggregate amount of \$5,909,000?

A. Yes, sir.

Q. And what other types of investments did you have as of December 31, 1952?

A. We had unsecured loans in the amount of \$29,613.14, and land contracts in the amount of \$491,642.05.

Q. And you had real estate and then you had Federal Home Loan Bank obligations; is that correct?

A. Federal Home Loan Bank stock.

Q. You had a certain amount of cash in the banks, office building and furniture?

(498) A. Yes, sir.

Q. Now, this report, Exhibit 58, does that give an analysis of the first mortgage loans made during the calendar year 1952 by your association?

A. It tells the number and the types and the purpose.

Q. And it shows an aggregate amount, does it not, of 353 mortgages made in 1952 and the aggregate amount of mortgages of \$2,081,920?

A. Yes, sir.

Q. And I suppose we can get the average amount of the mortgage by dividing the total by the number of mortgages?

A. Yes, sir.

Q. What would that average be?

A. The total at the end of that year amounted to \$4,163, on an average.

Q. What was the maximum loan you made in that year, if you recall?

A. Twenty thousand.

Q. Twenty thousand?

A. Yes, sir.

Q. And what was the interest rate you charged?

A. Typically 5%

Q. Now, did you have FHA mortgages?

A. Yes, sir.

(499) Q. Do you know what percentage were FHA mortgages as at this period or during the year of this 353 mortgages?

A. The statement shows the amount. I don't think it shows the percentage. The other statement, the financial statement, shows the breakdown between the year and—I believe it is in here—but on the other one it shows the amount of FHA, GI's and conventionals. It is in one of the other exhibits. It shows the amount. I haven't broken it down as to percentage.

(500) Q. Those were as of the mortgage balances on hand at that time?

A. That's right.

Q. But you don't know how many of each class you made during that particular year '52?

A. No, I don't.

Q. But you did make a substantial amount of FHA mortgages?

A. Yes, sir.

Q. They were 20-year mortgages?

A. Generally.

Q. And Veterans Association mortgages?

A. Yes, sir.

Q. And then you had conventional mortgages?

A. Yes, sir.

Q. How long were the average conventional mortgages?

A. Twelve to fifteen years.

Q. Were some less than that?

A. Well, there might have been a few.

Q. Some less and some more?

A. Well, a few more, but generally they were twelve to fifteen years.

Q. And what rate did you charge on your conventional mortgages?

A. 5 per cent.

Q. And you knew the Michigan National Bank was making FHA mortgages in 1952 on homes, did you not?

Mr. Dexter: Your Honor, why doesn't he ask the (501) witness a question?

Mr. Klein: I'm sorry.

Q. (By Mr. Klein): Did you know whether or not the Michigan National Bank in 1952 made FHA mortgages on homes?

A. Well, I knew it, but possibly by hearsay.

Q. Well, you were president of an important, substantial, operating mortgage company, weren't you?

A. Yes, sir.

Q. And you, in that capacity, made it your business to know who was in the business of loaning money secured by mortgages on homes in 1952, didn't you?

A. Yes, sir.

. . . . .

Q. (By Mr. Klein): Was there any competition of any kind for loaning money secured by mortgages in 1952?

A. In the Flint area, very little competition.

(502) Q. Very little?

A. What I mean by that is that you didn't seek mortgages during that year.

Q. Did you borrow the maximum amount you could have borrowed from the Federal Home Loan Bank in 1952?

A. I borrowed as much as was prudently desired.

Q. But not as much as you could, sir?

A. I didn't borrow the total amount, no, sir.

Q. And did you know whether the Michigan National Bank was making mortgages in the Flint area in 1952?

A. Yes, I did.

Q. And were there other institutions making loans secured by home mortgages in 1952 in the Flint area?

A. Oh, yes; many.

Q. Who?

A. Well, the other—at that time there were three other banks, the Citizens Commercial & Savings Bank of Flint, the Merchants Mechanics Bank of Flint, Genesee County Savings Bank of Flint; the life insurance companies, like Equitable, Metropolitan, some from Prudential; and others that I'm not sure how many others, but those are generally the ones who were doing business.

Q. Did you ever in 1952 refinance a mortgage held by the Michigan National Bank, your association?

A. I might have.

(503) Q. And did the Michigan National Bank in turn refinance mortgages held by your association in 1952?

A. Well, that happens nearly every year. I couldn't say that it happened in 1952, but it happens continuously, sir.

Q. Right along?

A. It probably did.

Q. And each of your respective institutions, talking about the Michigan National Bank and your association, did they make mortgage loans in 1952 secured by residential property on the same type of properties?

A. Well, they made on the same type—you mean exclusively or—

Q. (Interposing): No, no.

A. Did they make some on the same type?

Q. Yes, sure.

A. Yes.

Q. And in the same area as you did?

A. Yes, sir.

Q. And to the same class of people who were borrowers?

A. I don't know how you class people, but I would think so.

. . . . .

(504) Q. Mr. Parker, again referring to Exhibit 58, Schedule 2, analysis of first mortgage loans made during the year 1952, I see there is a heading "Other Purposes," other than construction, purchase of homes, or refinancing; what were the "Other purposes" of these loans?

A. Generally, builders loaning waiting for permanent financing through conventional FHA or GI sources.

Q. Did you make any loans to individuals secured by mortgages on their homes for financing purposes of automobiles?

A. Very few during the year 1952.

(505) Q. You did make some?

A. We might have made one or two, but very few, very limited.

Q. And what other classes of loans or purposes were there under that heading "Other Purposes"?

A. Modernization of property.

Q. Well, that is under one of these others.

A. That would come under—it might be the purchase of some other property, new property that the man would borrow on a short term loan until he sold the old home.

Q. Or could it be for personal use?

A. Well, it could be funeral expenses, or other personal uses.

Q. Other personal uses?

A. That is right.

Q. Now, do I correctly understand in the year 1952, and in prior years, your Association sought out people to invest in shares or share accounts of the Association; you advertised, did you not?

Mr. Dexter: Your Honor, I think that the witness is being led. I do not think he testified anything about advertising.

Q. (By Mr. Klein, continuing): Well, did you seek out investors of shares; did your Association seek to get as many investors for your shares in 1952 as you could?

A. Yes.

Q. Did you advertise?

(506) A. Yes.

Q. What source of advertising, what media of advertising did you use?

A. Newspaper, radio, pamphlets, some direct mail.

Q. How often did you use the newspaper, radio—

A. (Interposing): Well, I can tell you the breakdown as to amounts spent in each classification, if you—

Q. (Interposing): Well, were you in the papers frequently or not?

A. Yes, the newspapers' advertising would be 50 per cent of our advertising.

Q. How often, approximately, would you have an ad in the paper?

A. Probably once a week.

Q. And how about radio?

A. Well, spot announcements at various times during the week.

Q. And were you on TV?

A. No, we do not have a TV station.

Q. You do not have a TV station; and then you used direct mail advertising—

A. We have at different times; I am not sure about 1952.

Q. And were the people whom you tried to reach members at the time you put the ads in?

A. No, they become members afterwards.

Q. They become members after they come to your Association and asked to start a savings account?

(507) A. Well, simultaneously; at the same time.

Q. Yes. And, what were the rights and liabilities of such persons who became members when they simultaneously became account holders and members; what were their rights, and what were their liabilities as a member?

A. Well, I cannot think of any liabilities they might have. Their rights would be that they would be entitled



to vote at our annual meeting; one vote for each \$100 investment, to a maximum of fifty votes.

Q. Do you recall how many—well, I think it shows here—that as of December 31, 1952, how many shareholder members did you have, or investment accounts?

A. There are two figures. It was either 3047 or 3029, I don't know which.

Q. And they had an aggregate shareholding investment of \$6,516,000?

A. That's right.

Q. Have you figured out the average account runs about a little over about twenty-one or twenty-two hundred dollars?

A. \$2,138.

Q. And was there any limit on the amount you would accept by an investor shareholder?

A. You mean by dollar?

Q. Dollar limit?

A. No.

(508) Q. You would take as much as they would be willing to invest in the shares?

A. That's right.

Q. And did you have professional men as investors?

A. What do you mean by that?

Q. Doctors, lawyers?

A. Yes.

Q. Business men?

A. Yes.

Q. Did you have corporations as investors?

A. We have had at different times. I'm not sure about '52.

Q. Trustees of estates or other trusts?

A. Yes.

Q. And did you in '52 take investors who were trustees of pension plans?

A. I don't think so.

Q. Did you have investments by various charitable organizations who had money to invest?

A. Yes, I think so.

Q. And did you or did you not appeal to any particular economic or income strata of investors?

A. No.

Q. Did you or did you not appeal to investors of all economic classes?

A. Yes.

(509) Q. In other words, anyone who wanted to make an investment, there was no limit on the amount you would try to get from them?

A. That's right.

Q. Was the investor a creditor of the Association?

A. No, sir.

Q. Was he a shareholder?

A. Yes, sir.

Q. Did you agree to pay him any fixed rate of interest on his investment?

A. No, sir.

Q. Did you agree to pay him any fixed rate of dividend on his investment?

A. No, sir.

Q. In other words, the investor took the risk of profit or loss in your operations?

A. I don't know what you mean by "loss."

Q. Well, if you lost, his equity would be worth less, his shares?

A. He would get less dividend. He wouldn't actually lose his amount assessable.

Q. Well, at least his investment would become worth less, wouldn't it?

A. Well, he would have less dividend, yes.

Q. Well, if your association happened to have lost money, his equity in the corporation would be less, wouldn't it?

(510) A. Well, now, his—

Q. (Interposing): Well, in other words, he had a stake in the business?

A. Well, but his investment wouldn't shrink.

Q. Well, if the dollar value of the assets went down, the value of his pro rata share in corporation would be worth less, wouldn't it?

A. Well, now, you are getting into a technical question. I mean, here, if he has a thousand dollars and you lose money for one year, he still has a thousand dollars. That doesn't become worth less.

. . . . .

Q. (By Mr. Klein): Was it necessary for a borrower to be an investor in shares?

A. No, sir.

Q. And was it necessary for him to be a member before he became actually a borrower?

A. No. He did at the time he borrowed, he became a borrower.

Q. Did he have to pay anything to become a member when he became a borrower?

A. No, sir.

(511) Q. Was there any liability or obligation attached to his becoming a member when he became a borrower?

A. No.

Q. And what procedure did you follow in considering applications for mortgage loans? Did you bring an application form with you, sir?

A. Yes, sir. (Handing document to Mr. Klein.) There is other exhibits in there. You could take that out if you like.

(A form of application for loan was marked Plaintiff's Exhibit No. 59 by the reporter.)

Q. I will show you Exhibit 59 and ask you whether or not that was a form of application for loan used by your association in the year 1952?

A. Yes, sir, it was.

Mr. Klein: I offer that in evidence.

Mr. Dexter: No objection, except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein): And I see according to this Exhibit 59 you required the information as to the financial worth of the applicant and his income and sources of income, and so forth?

A. Yes, sir.

Q. And did you follow the practice of having an appraisal on the property on which a mortgage was sought?

(512) A. Yes, sir.

Q. And as a matter of policy, were you conservative in making loans in 1952?

A. Yes, sir.

Q. And following that conservative policy, what was the ratio of loan you would make in respect to the valuation of the property to be mortgaged?

A. Well, I can state the maximum. Generally there is more that goes into it than that. The maximum loan that we were making at that time was 66 $\frac{2}{3}$ %, two-thirds of the appraisal value. That was maximum, graded down from there.

Q. What was your policy or average amount in '52?

A. I am only stating it from memory. I think it was maybe 52 to 55 per cent.

Q. And what types of mortgages did you say you used? All types, in '52?

A. You mean like FHA, GI's, conventional?

Q. Yes.

A. Yes, sir.

Q. You don't have a breakdown of that, other than what appears in the record?

A. We have a total at the end of the year, but not the originations.

Q. And the amortization was on an equal basis per month on each (513) of those mortgages?

A. Every mortgage was a monthly amortization mortgage, except possibly a few builders' loans, which were short-term loans.

Q. And excepting the builders' loans, the monthly amortizations would be equal throughout the entire term of the loan?

A. That is right.

Q. There would be no ballooning at the end?

A. No, sir.

Q. In what area in and about Flint did your Association seek and/or obtain mortgages in 1952?

Mr. Dexter: Your Honor, that is a double question, seek and/or obtain, and I don't believe the witness has testified that they sought mortgages at all.

Q. (By Mr. Klein): Did you seek mortgages in '52?

A. No, sir, it wasn't necessary.

Q. If wasn't necessary. People came to you to borrow money, did they?

A. That is right.

Q. But you did try to get as much investment as you could, investors' shares, didn't you?

A. Yes, sir.

Q. And you didn't borrow to the limit to get money to make mortgage money available?

A. That is shown in the statement as to the amount.

Q. But you didn't borrow the maximum, I think you testified (514) before.

A. I said we borrowed a prudent amount.

Q. Have you ever had a different rate of interest than five per cent interest at any time in the history of your Association?

A. Yes, sir.

Q. What was the interest rate?

A. Are you talking about before '52?

Q. Both before and after.

Mr. Dexter: Your Honor, I request that the answer in reference to anything after '52—the question with reference to anything after '52 be stricken.

The Court: You may go on a separate record; however, you better separate the two questions, in view of the fact that we are—

Mr. Klein: Very well.

Q. (By Mr. Klein): Did you have any different or higher interest rate on mortgages prior to '52 than five percent?

A. In some cases, yes, sir.

Q. Did you have a higher interest rate on mortgages after 1952 at any time?

A. Yes, sir.

Mr. Dexter: We object to that.

The Court: Anything after '52 is on a separate record, unless there is a special purpose—

(515) Mr. Klein (interposing): I think there is a special purpose. If you wish, I will state the purpose.

The Court: Yes, sir.

Mr. Klein: Mr. Dexter tries to make the point that because he indicates that the mortgage money market was tight that there is no competition. At least he is going to argue that.

Of course, that is just like saying Ford, Chevrolet and Plymouth did not have competition in selling automobiles when automobiles were hard to get. They are still competitors, and I think the Government has always so indicated.

Now, I think various terms of mortgage interest rates and different conditions will indicate part of the competitive situation, and that is all I am trying to indicate, that depending on the demand and supply, terms are better or worse, depending on the situation. That is all I am trying to develop in that line of questioning, sir.

The Court: It is understood the objection applies, and I will rule on it later if it seems to have any materiality.

Q. (By Mr. Klein): Did you say you had higher rates after '52 at any time for any mortgages?

A. Yes, sir.

Q. What rates did you charge after '52?

A. We don't have a fixed rate. The rate will vary as to the age (516) of the property and location of the property. The highest rate that we have ever charged on any loan was six per cent.

Q. Would your interest rate be affected by the demand and supply for money?

A. Not necessarily.

Q. You say not necessarily. Would it be a factor?

A. It could be a factor.

Q. And the terms of your mortgage could be a factor, could it not?

A. Well, it could be, yes, sir.

Q. And could the appraisal ratio to the amount you loan, on an appraisal ratio, be a factor in considering the demand and supply of mortgage loan money?

Mr. Dexter: These last three questions are all hypothetical: could be, could be.



Q. (By Mr. Klein): Would be a factor?

A. During which year?

Q. 1952, to start with.

A. No, sir.

Q. Law of supply and demand, wasn't that a factor at all times in determining what your policy would be, your loaning policy?

A. Well, generally the flow of mortgage money is governed by supply and demand, of course, and usually the rate is governed (517) by the other people in the community or by the type of association that we are in. I don't want to make a speech here, but—

Q. (Interposing): What other people are you talking about now?

A. I mean the other people who are lending in the same area.

Q. So that was a factor in determining, one of the factors in determining your policy of your association?

A. That is right.

Q. Yes. Now, in what area, in and about Flint, did your Association make loans in 1952, mortgage loans?

A. Genesee County.

Q. Genesee County. As a rule or practice, in 1952, when your Association received a mortgage, after making a loan, did your Association promptly record such mortgage?

A. Yes, sir.

Q. With the Register of Deeds?

A. Yes, sir.

Q. Now, in 1952, Mr. Parker, did your Association pay an annual privilege fee or tax to the state of Michigan?

A. No, sir.

Q. Did your Association pay an intangibles tax on the shares to the state of Michigan?

A. Yes.

Q. Do you recall the rate of that tax?

A. Yes, I think it is forty—

(518) Q. Forty cents a thousand?

A. Forty cents a thousand, that is right.

Q. Yes. And, did your Association pay an ad valorem real property tax on real estate which it owned?

A. Yes, sir.

Q. In 1952?

A. Yes, sir.

Q. That was based on the assessed value of the real estate?

A. Yes, sir.

Q. And you paid whatever the going tax was for real property tax in Flint or Genesee County?

A. Yes, sir.

Q. Did your Association pay a personal property tax in 1952?

A. No, sir.

Q. You did not?

A. No, sir.

Q. About how many people did you employ in 1952, Mr. Parker; I say you, I mean your association?

A. I would have to guess; I would guess ten.

Q. And is your office anywheres near the Michigan National Bank?

A. It is two blocks.

Q. And is it near any of the other banks?

(519) A. One block from—

Q. In Flint?

A. —the Genesee County Savings Bank, and a block and a half from the Citizens Commercial Savings Bank.

Q. Did I get from you the rate of dividend that was paid in the year 1952? Did I ask you that before?

A. No, sir. The rate was two and one-half per cent.

Q. What is the present rate of dividend—and I know this is subject to a special record.

A. Three and a quarter per cent.

Q. Was there any special economic class, as far as income, in determining your loaning policy, that is, as to the people to whom you loaned money; were they from any special classes, or from all economic classes?

A. From all economic classes.

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(520)

*Cross Examination*

By Mr. Dexter:

Q. May any of the shares of your association be assigned?

A. You mean without our acceptance?

Q. May they be assigned—period?

A. Well, I mean I do not quite understand; to another person, or collateral, or to assigned ownership?

Q. That is right, assigned ownership?

A. Not without our transfer.

Q. But they may be assigned if you consent?

A. Yes.

Q. The association consents?

A. Yes.

Q. Can the shares be redeemed or repurchased at the option of the Association?

A. Yes, sir.

Q. Is that done from time to time?

A. Well, yes; that is a matter of regular course of business.

Q. And in redeeming the repurchases, what is the amount paid?

A. Well, the withdrawable value, which is the original amount, plus accumulated dividends.

Q. That is, the original dollar amount put in, plus the accumulated dividends that have been actually declared?

A. That is right.

Q. So the repurchase, or redeemed shares do not participate any (521) further than that in the profits, losses, of the Association?

A. No, sir.

Q. And is your shareholder's interest constantly changing; that is, people putting in—getting additional shares, and new shareholders coming in, and so forth?

A. Oh, yes, day by day.

Q. There is an actual turn-over?

A. Oh, yes.

Q. Each time they get back then the dollar amount of their investment, plus the declared dividends?

A. Yes, sir.

Q. That haven't been paid to them yet at that date.

Do you reserve the power to refuse anyone's wish to become a shareholder?

A. We reserve that power, yes, sir.

Q. Is that reserved in your by-laws?

A. Yes, sir.

Q. In other words, the acceptance of membership of shareholders is an actual step that your Association has to go through in accepting a shareholder; it is a process that has to be gone through each time, is it not?

A. That is right.

Q. Now, what cash reserves and deposits are you required to keep?

(522) A. You mean by the Home Loan Bank System?

Q. Yes.

A. I mean, are you talking about 1952 or—

Q. (Interposing): Yes.

A. Generally, I think the cash in Governments at that time was six per cent, if I have a correct memory on that.

Q. Required to keep a six per cent reserve?

A. That is right.

Mr. Klein: Six per cent of what, sir?

A. Of our savings accounts.

(523) Q. (By Mr. Dexter): Will you describe your sources of capital and borrowed money?

A. As to who we—

Q. (Interposing): Your sources of capital. What are your sources of capital?

A. Well, the sources are the people in the community. You mean who we get the money from?

Q. Yes.

A. People, generally speaking, in our own community. There possibly is a few who live outside of our immediate area, but probably 90 per cent would be in our immediate area.

Q. But the source of capital would be the people that come in and become members and shareholders?

A. Yes, sir.

Q. Is that the only source of capital?

A. That is the only source, yes, sir.

Q. Do you have any sources of borrowed funds?

A. Well, yes. We don't consider that as capital, but we have borrowing power from the Home Loan Bank, of course.

Q. What evidence does a shareholder have representing his ownership?

A. He has a certificate showing that he is a member in his book.

This is a copy of the certificate that shows that he is a member, holds a savings account representing a share interest.

(524) Mr. Dexter: Let's have it marked.

A.: You may pull them off.

Q. (By Mr. Dexter): There is three of them here; is that right?

A. There is a savings book, a loan book, and the membership certificate on each one.

Q. And these were all in effect in 1952?

A. Yes, sir.

(A savings passbook and certificate were marked Defendants' Exhibit 60-A; a borrower's membership certificate and book were marked Defendants' Exhibit 60-B; a form of certificate was marked Defendants' Exhibit 60-C; and a savings account membership certificate was marked Defendants' Exhibit 60-D.)

Q. (By Mr. Dexter): Are all the savings certificates the same for all Federal associations?

A. Yes, sir.

Q. In other words, your certificates that I have had marked Exhibits 60-D and 60-C would be the same for all Federal savings and loan associations?

A. Practically. There might be a slight difference in wording, but it is practically the same certificate. I am not positive, but they could be worded slightly different; but in general, in form, it must be a regulation form and one that meets with the approval of the Home Loan Bank Board.

Q. In other words, the Home Loan Bank Board approves the nature (525) of the certificates?

A. Yes.

Q. And would the same be true with regard to Exhibits 60-A and B, which are the passbooks?

A. Yes, sir; the borrower's membership certificate, yes, sir.

Q. Those are all identical for your federal associations?

A. Yes, sir.

Q. In substance.

Mr. Dexter: I would like to offer these in evidence.

Mr. Klein: No objection.

The Court: Will one of you be good enough to tell me which is which here, now?

Mr. Dexter: I'm sorry.

Q. (By Mr. Dexter): Would you go through these four and expand for the record exactly what they are? Exhibit 60-A?

A. That's a savings passbook, and there is a certificate in it.

Q. Is that a full-paid certificate or a partial-paid?

A. No, it is recognized as a savings account, as it states.

Q. And that would be 60-A. How about 60-B?

A. That is the borrower's membership certificate and book.

Q. And what is the difference between 60-A and 60-B?

A. Well, the difference, one is a saver and one is a borrower.

Q. All right. And Exhibit 60-C is what?

A. That's a form of certificate that may be used instead of a (526) passbook.

Q. That would be for a full-paid share?

A. We don't have full-paid shares, as such. They are all savings accounts, one represented by a passbook, the other represented by a certificate. The only difference is that the passbook may be added to from time to time; the certificate can't. You have to issue a new one each time.

Q. Basically they are the same thing?

A. Exactly the same—have the same standing.

Q. And 60-D is what?



A. That is the savings account membership certificate.

The Court: They have been offered?

Mr. Dexter: That's right.

The Court: And they are received.

Q. (By Mr. Dexter): As I understand it, you do require a financial statement from a borrower before loaning money to him?

A. Yes, sir.

Q. You also require him simultaneously to become a member?

A. Yes.

Q. Do you know what percentage of your loans are made to individuals?

A. You mean other than corporations?

Q. Yes, other than corporations.

A. It is a very rare exception when a corporation borrows money from us. I would say at least 99 per cent are loaned to individuals.

Q. In other words, only one per cent would be loaned to corporations or other business entities?

A. Other than individuals. I don't know whether it is one per cent. It would be so low it might be less than one per cent.

Q. A very minor portion?

A. Very, very small portion.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on farm and residential property?

A. Well, they all are.

Q. 100 per cent of your loans are secured in that manner?

A. Well, now, of course, a slight variation might be an improvement loan, an FHA improvement loan to

modernize a home or repair it. That doesn't have a mortgage in it.

Q. But the security behind the improvement loan would be what, then?

A. That is merely a promise to pay.

(528) Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No, sir, except this improvement loan to his home, which is insured by FHA generally.

(529) Q. Do you make any straight mortgage loans?

A. By straight, you mean short-term loans?

Q. Yes.

A. Only for short term to builders.

Q. Just to builders, until property that is going to be security is built?

A. Yes, until permanent financing is arranged.

Q. Do you make any open-end type of loans?

A. Yes, sir.

Q. What provisions are made in your mortgage concerning pre-payment?

A. You mean can they pay the full amount?

Q. Is there any penalty in paying it ahead of time?

A. We have a penalty provision in our mortgage.

Mr. Klein: Would you say how much?

A. Yes, sir. I mean, we can waive or charge the penalty at will, but there is a penalty in our conventional mortgage up to three years of six months' interest on the balance due.

Q. What has been your practice in '52?

A. We didn't have a penalty clause in '52.

Q. Do you sell or assign any of your mortgages?

A. Yes, sir.

Q. What was the condition of that in regard to the period we are talking about; that is in 1952?

A. If I may see the statement, I can tell you about the amount. (530) It was rather small. 284 thousand.

Q. Were you attempting in 1952 to sell or assign any mortgages in addition to that?

A. Yes, sir.

Q. Why?

A. Our demand for mortgages exceeded the supply of money on hand.

Q. And in reference to that condition, what was your interest as a federal savings association in Flint?

A. Our interest was that we were interested in building the community and going along with the progress, as the progress of our community was going at a pace that our savings were unable to take care of at the time.

Q. So your interest then was trying to bring into the community that you served more money for mortgages in a tight mortgage market?

A. That is right, yes, sir.

Q. Now, once the mortgage and the mortgage note are signed by the borrower, how are the funds then made available to him?

A. Well, if it happens to be a finished house, the funds could become immediately—you are talking about how does the borrower get it or how does the seller of the property get it?

Q. How do you make it available? What are the mechanics of getting the money to the borrower?

A. He signs the mortgage, and the mortgage is set up, and if he is buying the property from somebody else, it can be disbursed (531) immediately.

If it is a house that is being built, he may take progress draws. We will have a property check on it and advance him sums at different stages of construction.

Q. Is there any direct relationship necessarily between the time the money is lent and the mortgage is taken?.

A. That is another technical question. We record the mortgage immediately.

Q. Even though you haven't loaned the money?

A. Yes. Many times the mortgage will be on the books long before any money is disbursed.

Q. Is that generally true in regard to construction type mortgages?

A. Yes. Very dangerous. You don't do it that way.

Q. In other words, then, the record of your mortgages on the books or in the register of deeds does not necessarily indicate that you loaned that amount of money in a particular period of time?

A. Well, actually you have loaned it, but you may not have disbursed it.

Q. You have committed yourself to it, but you haven't actually disbursed it?

A. That is right.

Q. From what source are your funds disbursed to the borrower?

A. Out of what account?

(532) Q. Yes.

A. Out of loans in process account.

Q. What form of draft or payment do you make to the borrower?

A. We give him our own check on our association.

Q. A check drawn on whom?

A. On the association. On a commercial bank.

Q. Drawn on a commercial bank. In other words, do you keep a commercial banking account for that purpose?

A. Yes, sir.

Q. Do you know how much there was in 1952 and what banks they were located in?

A. I can't tell you the breakdown of the bank. I can tell you the amount of cash on hand.

Q. Do you know approximately how much was in the hands of commercial banks?

A. 549 thousand, and I can't give you the breakdown.

Q. Do you know what banks they would normally be in in 1952?

A. Yes. Genesee County Savings Bank and Citizen's Commercial Savings Bank, some money with the Home Loan Bank of Indianapolis. That would be the distribution, but the dollar amount and how it is divided, I couldn't give you that.

We had an M & M, Merchant's Mechanic Bank, which is now merged with the Genesee County Savings Bank.

Q. In '52?

A. That is right. There was an account in that bank.

(533) Q. Do I understand that you didn't have any VA or FHA mortgages in '52?

A. Yes, sir, we did have.

Q. Do you charge the full rate permitted for servicing those mortgages in '52, full rate permitted by law for servicing those?

A. Yes, sir. You are talking about interest rate?

Q. That is right. Well, the charges for servicing—

A. (Interposing): Yes, sir.

Q. We are discussing the calendar year '52; what was the situation of the mortgage money market in that year?

A. Well, it was strictly a lender's market.

Q. What do you mean by that?

A. By a lender's market, that you would receive more applications than you have money or money to loan on,

and, in other words, during that year it was about for each dollar you had, you had about \$2 in applications that you could have fulfilled.

Q. Now, you stated that you had borrowed all the money that you could from the Federal Home Loan Bank.

A. I didn't say all I could.

Q. That was prudent.

A. That is right.

Q. And would you explain what you mean by that?

A. Well, you needed to keep a certain amount of credit available (534) for two things. First, you needed additional available credit in case your savings would shrink on you during this year. That is number 1.

Number 2, you needed available funds—credit available in case you were about to sell some mortgages and were awaiting the final distribution of the sale, which is a considerably long process at times. You might have a bank of mortgages built up that you were about to sell. You might need a considerable amount to keep your program going.

Q. In other words, you treated the additional ability to borrow from the Federal Home Loan Bank as part of your necessary operating reserve?

A. Liquidity.

Q. Liquidity?

A. Yes.

Q. And the reason you didn't borrow more was not because there wasn't the demand for mortgage money, but simply because to properly run your business, you needed that additional liquidity?

A. Yes, at least additional protection to take care of you over a period that—when you might be short of cash.

(535) Q. But within this limit, you borrowed the maximum that you could during 1952, bearing in mind—

A. (Interposing): By our own formula, yes, sir.

Q. What do you mean "by your own formula"?

A. Allowing for the additional amount of the liquidity to take care of future business, and being cautious enough that we wouldn't run out of money and wouldn't have to cancel commitments.

Q. That is to keep your business going?

A. That is right.

Q. Will you describe the nature and extent of governmental supervision and the governmental agency supervision of your association?

A. Yes, sir. We are supervised by examiners from the Home Loan Bank Board; that is what you mean—

Q. That is right.

A. —on the type of examinations we have. And, they examine us,—they are not directly connected with the Home Loan Bank of Indianapolis, but the Home Loan Bank of Indianapolis is a supervisory agent; they make their report to the Home Loan Bank and the Home Loan Bank then, in turn, gives you a report on the examination, citing any changes that should be made, or corrections that should be made.

Q. Are you on the Home Loan Bank Board?

(536) A. Yes, sir, I am,—the Home Loan Bank of Indianapolis, I am currently a director.

Q. What is the nature of the supervision of the Board over an association such as yours?

A. Well, they make a very thorough examination, examine all accounts, all mortgages, examine by-laws, and practically everything, to see that you are conforming to the charter and your rules and regulations; also as to the loans, whether they are within the scope of the Home Loan Bank Board regulations.



(537) Mr. Dexter: All right. The regulations that the Board puts out from time to time in regard to the purpose of your Association, and comparable associations.

A. Yes, sir, the Home Loan Bank Board, you must not confuse the Home Loan Bank of Indianapolis with the Home Loan Bank Board. The regulations do come from the Home Loan Bank Board as to what you can do and when you can do it.

Q. (By Mr. Dexter, continuing): Are those published regulations?

A. Oh, yes, yes, sir.

Q. They would be a matter of checking the regulations of those Boards in 1952 to find out what the purposes of that Board were in terms of examining and auditing the particular associations?

A. Well, they check, as I stated before, they check to see if you are within the requirements of the regulations, that is—

Q. (Interposing): That is the purpose of the examination?

A. That is the purpose. I mean, there are other added things, but that is the main purpose.

Q. Are you permitted to borrow from the Federal Reserve System?

A. No, sir.

(538) Q. As I understand it, you stated before that you are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What territory does that bank serve?

A. It serves the states of Indiana and Michigan.

Q. What agency of the Government, if any, insures your stockholders or shareholders?

A. The Federal Loan Savings Insurance Corporation.

Q. Are your shareholder accounts insured?

A. Yes, sir—all Federals must be.

Q. And under what Federal agency are they insured?

A. I just stated, the Federal Savings Loan Insurance Corporation.

Q. I see: Now, is there a difference between the Federal Savings and Loan Insurance Corporation, in reference to your Associations, and the Federal Deposit Insurance Corporation applicable to banks?

. . . . .

(539) Q. (By Mr. Dexter, continuing): Will you describe just generally your principal place of operation in Flint, the kind of physical set-up it is?

A. The address is 126 West Kearsley Street, at the corner of Kearsley and Beech Street.

Q. What, generally, is the interior set-up of that office?

A. Well, the interior is composed of officers' quarters on one side, tellers, who receive payments on both savings and from borrowers, on the other side; a vault in the rear, and manager's office back of the officers' quarters, and a directors' room in the rear of that.

. . . . .

(541) (By Mr. Dexter, continuing): I would like to show you Exhibit 58 and ask you if that indicates your net income for the period covered by the report?

A. Yes, sir.

Q. And is this figure, net income, after all taxes are paid by your association in 1952?

A. Yes, sir.

Q. What is the amount of that? Could you read that figure—it is pretty well blurred?

A. \$224,496.57. That does not include the payment of dividends, however—before dividends.

Q. Now, when did you say you came with the Savings and Loan Association that you are now associated with?

A. December of 1944.

Q. And what did you do prior to that time?

A. Immediately for the two years before that I was in the Army for a short time, and worked for the Buick Motor Division during this two year period. For the twenty years previous to that I worked for a commercial bank in Flint, Genesee County Savings Bank.

Q. How long did you work for a commercial bank in Flint?

A. A little over twenty years.

Q. Are you currently a stockholder in a bank?

A. Yes, sir.

(542) Q. Are you currently a shareholder in a savings and loan association?

A. Yes, sir.

Q. Will you answer this: What are your present connections with savings and loan associations?

Now, understand you are a member of the Federal Home Loan Board, is that correct?

A. That is correct.

Q. And do you have any other association connections outside of your job, and that particular position?

A. No other savings associations, no, sir.

Q. Did you hold any official position in 1952 with any association?

A. Other than the one I am with?

Q. Yes.

A. No, sir.

Q. I use the word "association"; I do not mean a particular building and loan association, but maybe an association of building and loan associations?

A. Oh, I misunderstood the question. You mean in a trade organization?

Q. That is right.

A. Yes, I was a member of the Board of Directors for the Michigan Savings and Loan League for six years, and that would have included 1952.

. . . . .

(544) Q. (By Mr. Dexter, continuing): Would you state the nature of your experience for twenty years with the banking business?

A. During that period of time, generally what I did?

Q. That is right.

A. I was branch manager for several years at one of the Genesee County Savings Bank branches and later was manager of the savings department for the same bank.

Q. And in that capacity were you able to familiarize yourself with banking businesses and practices generally?

A. Yes, sir, generally.

Q. Did your duties and functions of your offices held require you to become so familiar?

A. Yes, sir.

Q. Now, in reference to your present job with your own association, are you familiar with its operations?

A. Yes, sir.

Q. Are you familiar with the nature of investments made in national banks by shareholders?

A. Now, let me get that. Let me understand it.

Q. Let me ask you this: Are you familiar with the capital structure of banking associations?

A. Generally, yes, sir.

Q. Are you familiar generally with the capital structure of savings and loan associations?

A. Yes, sir.

(545) Q. Do you know generally the sources of their capital?

A. —Yes, sir.

Q. The kind of activities they engage in?

A. Yes, sir.

Q. Can you state generally the nature of the business of savings and loan associations as you have found out through your own experience?

Mr. Klein: Generally, or this particular one?

Mr. Dexter: Generally.

Mr. Klein: Throughout the United States?

Q. (By Mr. Dexter): As I understand it, your experience has been limited primarily to the Flint area. Is that correct?

A. Yes, sir.

Q. And you are closely familiar with the operations of both banks and savings and loan associations in that area?

A. Yes, sir.

Q. Also, you are familiar generally, through your connections with the Home Loan Bank Board and the Savings and Loan League, with the general operation of the savings and loan institutions within the State of Michigan?

A. Yes, sir.

Q. Will you state the nature of the business of savings and loan associations in the State of Michigan?

A. They are thrift and home financing organizations.

(549) Q. (By Mr. Dexter): Let me ask you, sir, whether there has been any change in the character of federal and state savings and loan associations since 1933?

A. Well, I can speak for federal savings and loan associations positively. The only changes have been minor mechanical changes as to charter, are you referring to, or—

Q. (Interposing): Well, their basic purposes, what they do?

A. The basic purpose hasn't changed.

Q. Do they serve generally the same class and kind of people they have always served since '33?

A. Yes, sir.

Q. Do they make the same kind of loans that they have always made?

A. Yes, sir.

Mr. Klein: Are you talking for all of them, or just your own?

Mr. Dexter: He is familiar, I believe—

(550) Mr. Klein (interposing): I am asking the witness.

The Court: Let him answer the question, and if you want to object to it, I will make him wait until the answer.

Mr. Klein: I'm sorry, sir.

Mr. Dexter: I assume he is qualified in the area of Michigan, which is the broadest scope—

The Court (interposing): You can ask the question knowing from what he speaks. You can ask the question if you wish.

Q. (By Mr. Dexter): Your experience, as I understand it, in regard to federal savings and loan would be in reference to Michigan and Indiana?

A. Yes, sir.

Q. As I understand, being President of the Michigan Savings and Loan League, you became familiar with both the state and federal associations, their purposes and their problems, and so forth?

A. Yes, sir.

Q. That was the function of the office, was it not?

A. Yes, sir.

Q. So that you can speak generally as to both associations in Michigan in terms of their basic character and the kind of business they have done from 1933 to date?

A. Yes, sir.

(551) Q. And as to those kind of associations in Michigan, there has been no change in their basic purpose or function?

A. No basic change. Very slight mechanical changes.

Q. For example, the membership arrangement in terms of certificates has been the same?

A. That's right.

Q. The type of business—that is, the mortgage activity—that has been the same?

A. That's right.

Q. The other details of what you do as a savings and loan association have been the same?

A. Yes, sir.

Q. The kind of appeal you make for getting shareholders interested in your organization has been the same?

A. Yes, sir.

Q. In fact, when some of these associations were started originally, wasn't it more difficult to get participation than it is now?

Mr. Klein: Now, just a moment. What time are you talking about now? What period of time by date?

Mr. Dexter: Well, prior to 1952.

Mr. Klein: Well, how long prior?

Mr. Dexter: As I understand it, Mr. Klein, we go back from—



Mr. Klein (interposing): Do you want to go to (552) 1890 or 1870? Let's start at some starting point. That is all I wish to have on the record.

The Court: We are talking about federal savings and loan, are we not?

Mr. Dexter: Yes.

The Court: And they started in what year?

A. 1933.

Mr. Dexter: So we will use 1933, Mr. Klein, as the date.

Would you read back the question?

(The last question was read by the reporter.)

Q. (By Mr. Dexter): That is, in 1933.

A. Well, yes, due to the economic conditions, certainly.

Q. I believe you have testified that the nature of shares in savings and loan associations has not changed since 1933?

A. Except mechanical changes. They are now defined as savings account represented by a share interest. I think the wording is slightly different.

Q. Basically, the statutory references and regulations and actual practice have been identical?

A. That is right.

Q. And they serve the same type of people?

A. Yes, sir.

Q. In terms of investments in the institutions and the kind of people who are the borrowers?

A. Yes, sir.

(554) Q. (By Mr. Dexter): Let me ask you this. Who are your competitors? Who are your competitors for obtaining share investments? Who are your competitors?

A. Well, we have many. You are talking about the consumer's dollar?

Q. That is right.

A. He has so many dollars to distribute?

Q. That is right.

A. Automobile companies is the greatest competitor. You could go down the line to washing machines, furniture, sale of homes, and all other things that the consumer buys or splits up his dollar. The biggest one, as I say, in our area particularly, is the automobile.

Q. In other words, by "competitor" you mean someone who is taking (555) the consumer dollar away from possible investment in your association?

A. That is right.

Q. And it would include any kind of economic activity which requires the expenditure of purchasing power?

A. Yes, sir.

Q. And it has been that way in 1933, and it has been that way to date?

A. Yes, sir.

Q. And has your relationship in regard to that kind of competitive condition for the economic dollar changed one iota since 1933 to 1952?

A. No, sir.

(557) Q. (By Mr. Dexter): Did you have any industrial mortgages in '52?

A. No, sir.

The Court: I would like to a certain extent shorten this up. Some of these questions we ask of every witness, it seems to me the answer must be obvious.

Are you permitted to make out industrial mortgages?

A. No.

The Court: Is any building and loan or savings and loan permitted to do so?

A. No federal and no industrial as such. I mean, they might make a mortgage loan to a corporation on their building, but strictly as an industrial loan, no.

Mr. Klein: There is testimony, sir, in deposition which we will show where there have been commercial loans up (558) to a quarter of a million dollars or more by some associations.

The Court: Very well, if there is an opening there, go ahead on both sides. I just don't want the same question asked every time if we can avoid it.

*Re-direct Examination*

By Mr. Klein:

Q. What do you mean by industrial as compared with commercial? Is there a difference in construction?

A. He asked me a question about the industrial loan, that there was a loan made to an industry on their—

Q. (Interposing): On a factory?

A. No, not a factory. On their statement, an unsecured loan to a factory.

Q. But it is within the power of the association to make a mortgage loan to a corporation secured by its factory or store building, or things of that kind?

A. There are certain qualifications. I am not sure about the factory. They can on the store building.

Q. And they have made such loans?

A. That is possible.

Q. Your association has made such loans in its history?

A. Our association, I don't know whether we made one or not. I don't think so. Generally we only make home mortgages.

(559) Q. That is your principal business?

A. Yes.

Q. You do make loans for other purposes? You so testified this morning.

A. Yes.

Q. Well, to get to some of the questions, Mr. Dexter asked you whether the investor share could be assigned without your consent. Do you know of any instance where such assignment was refused by your association?

A. I don't know whether we have ever had the actual—usually if there is a transfer of funds, the person transferring it comes into the office and withdraws his account and a new account is started. That is his procedure.

Q. But do you know of a single instance where any request of an assignment of shares has been refused by your association?

A. No, I do not.

Q. Do you know of any instance when any person seeking to make an investment with your association was refused the opportunity to make an investment?

A. No, sir.

Q. In other words, anyone who came with his money could make an investment and become a shareholder?

A. Yes.

Q. And then he became a member?

A. Yes, sir.

(560) Q. Although you reserve the power to reject anyone if you wanted to?

A. Yes.

Q. But you never have exercised that power?

A. You are talking about our association?

Q. Your own association.

A. No, sir, we never have.

Q. Now, a shareholder has a certain number of votes, does he not?

A. Yes, sir.

Q. How many is the maximum, and how is the vote determined?

A. I testified that he has one vote for each hundred dollars, up to a maximum 50 votes.

Q. But a member borrower has no vote?

A. No, he has the same.

Q. How about a borrower?

A. A borrower has the same number of votes if he wishes to exercise it.

Q. He has the same number of votes. Would you show me that in your by-laws, please?

A. I think it so states.

Q. I will come back to that later. Now, you are familiar with the terms of the FHA mortgage, are you not?

A. Yes, sir.

Q. The mortgage form?

(561) A. Yes, sir.

Q. And your association issued or obtained loan money that was secured by FHA mortgages in '52?

A. Yes, sir.

Q. And banks which loan money secured by FHA mortgages use the identical form of mortgage, don't they?

A. Yes, sir.

Q. And the same applies to veteran's mortgages in '52, does it not?

A. Yes, sir.

Q. Isn't it true that you have had extensive experience in the mortgage loaning business?

A. Yes, sir.

. . . . .

(562) Q. (By Mr. Klein): Do you know the forms of mortgages and the lending powers of various institutions lending money on mortgages in the Flint area?

A. Yes, sir.

Q. And you know what the banks' lending powers are as a company which also lends money on similar types of mortgages? You do, do you not?

A. Yes, generally.

. . . . .

(563) Q. (By Mr. Klein): Now, in connection with your loaning on mortgages, are many of your investors borrowers in comparison to the total number of borrowers dollarwise?

A. No, sir.

Q. A very small amount of your borrowers dollarwise are investors in shares; isn't that correct?

A. That is correct..

Q. And so when a person invests in shares in your institution, he does so for a profit to get dividends, does he not?

A. Yes, sir.

. . . . .

(564) Q. (By Mr. Klein): Was it the practice of your association in 1952 and prior to endeavor to earn as much money for its investors as was consistent with good, sound practice in the operation of the mortgage business?

. . . . .

A. Could I tell you the purpose?

Q. No, I am asking you what your practice was.

. . . . .

A. That is difficult to answer yes or no.

Q. (By Mr. Klein): Did you endeavor in operating your company in 1952 to earn as much dividends for your shareholders as was consistent with good, sound business practice in (565) running the mortgage business?

A. Well, that is the same question.

Q. If you can't answer it, say you can't answer it.

A. I can't answer it.

Q. Did you in 1952 have a different obligation to your shareholder investors than you had to your borrowers, in running your business?

A. Well, how do you mean, by obligation?

Q. Well, all right. What did your borrowers do from you other than borrow money, secured by a mortgage?

A. Well, they became a member.

Q. Yes, and that is all?

A. That is right.

Q. They paid nothing to become a member?

A. That is right.

Q. And then you have testified that most of your shareholders were not borrowers as far as total amount of borrowings were concerned?

A. That is right; you said a small percentage.

Q. A small percentage?

A. And I say that is correct.

Q. And those who were not borrowers were interested in dividends, isn't that correct?

A. Yes, sir.

Q. And the more money you earn the more dividends would be (566) available for your shareholders?

A. Well, I cannot answer that yes or no either.

Q. Well, you have consistently increased your dividend rate, have you not?

A. Yes, sir.



Q. And it is now three and a quarter per cent?

A. Yes, sir.

Q. Now, Mr. Dexter asked you about competition for the shareholders' investment dollar, and you talked about various groups that were competing for that investment dollar, like auto companies, washing machine companies, or, washing machines. Would you include savings in commercial banks in that class, competing for the dollar available?

A. Well, yes, there are many classifications; I did not want to—

Q. (Interposing): Yes, but is that one?

A. That is right.

Q. And would a person who is investing in shares in your association be put to the decision of whether he wished to become a shareholder in your association, with no guaranteed rate of return, as contrasted with his depositing money in a commercial savings bank at savings interest rates guaranteed by the bank?

A. Well—

Q. (Interposing): If you know, say so; if you don't know, (567) say so.

A. Well, I mean that would make too long again. I cannot answer yes or no.

Q. You answer it the best you can, sir.

A. He might include more things, possibly, than the rate involved. He might like to do business with the association. He might know some people that are with our organization. There might be many more reasons than just the rate alone. Probably the rate is favorable to him. The location of the office might be favorable to him.

Q. Would the dividend rate be an important factor, rate of return that he received on a share in the investment in the savings and loan association?

A. I think that is always important.

Q. You think that is a very important factor, isn't it?

A. Sure, yes.

Q. And, therefore, the more you are able to earn from your mortgage business, and pay higher dividends, the more you are able to attract from savings accounts of commercial banks?

A. Well, not necessarily. You do have a legal—or a reserve for losses that you must set up. I mean, there isn't all that difference that could be distributed to savers; I mean you have a prescribed amount that you must set aside.

Q. Do you know whether your rates in Flint, rates of dividend in (568) 1952 were higher than the commercial banks savings rates in 1952?

The Court: You misspoke.

Mr. Klein: 1952 in both cases.

A. 1952?

Q. (By Mr. Klein, continuing): Yes.

A. We were slightly higher.

Q. And are you of the opinion, experienced in your business, that that accounts for the increase in your investment share accounts?

A. Not entirely.

Q. It is an important factor, you say?

A. It is a factor.

Q. Is it an important factor, the rate of return?

A. A saver is interested in getting as much as he can.

Q. Right. And, do you know about the degree of increase in shares in savings associations from 19—well, just take the period you were in—from 1944 through 1952, of your own association?

A. Our records will show that we had eight million at the end of 1952; and the records will show, I think maybe three million or three and a half million in—1942, did you say?

Q. In 1952; from 1944 to 1952.

A. Oh. We increased from a million and a half in 1944 to the (569) figure here of eight million at the end of 1952.

(570) Where did you get your knowledge about Federal Savings and Loan Associations from 1933 until 1944; you were not connected with any, were you?

A. No, sir; only by the reading of regulations.

Q. But did you know how they operated during that period, of your own knowledge?

A. Well—

Q. (Interposing): Between 1933 and 1944, when you started with your Association?

A. Generally, by reading the regulations, yes, sir.

Q. Not otherwise?

A. No—not by actual experience, no, sir.

Q. Or knowledge?

A. Just by—

Q. (Interposing): Reading the regulations?

A. —reading the regulations.

Q. Yes, sir. So you do not have any first-hand knowledge or (571) information about the character of the operation of savings and loans during that period, except as you read from the regulations?

A. And knowing of the changing regulations, and the few changes—

Q. (Interposing): You are talking about changes in regulations only when you say there have been no changes from 1933 to 1952?

A. Well, the only mechanical—slight changes; they asked me about a basic change, and I said there had been none.

Q. And when you were talking that there was no basic change in regulations, or statute—

A. (Interposing): That is correct.

Q. —you were not talking about actual practice?

A. No, sir, about the basic—

Q. (Interposing): Law; Yes, sir. Now, in 1944 when you started with the Federal Savings and Loan Association of Flint, did you know whether or not at that time this bank, Plaintiff bank, the Michigan National Bank, was permitted to make mortgage loans under the FHA for twenty years?

\*   \*   \*   \*   \*

(573) Q. Mr. Parker, I think you described the 1952 money situation as being a lender's market.

When you are in such a market, your association, is it not true that your association then can be more selective to secure the most safe and the highest type of mortgage as security for your loan?

A. Yes, sir, you are in that position.

Q. And you practiced that means of selectivity in 1952, did you not?

A. Yes, sir.

Q. And your loaning basis—that is, the basis of the amount of loan towards the valuation—was partly the product of it being a lender's market in '52; isn't that correct, sir?

A. That bears on it, yes.

\*   \*   \*   \*   \*

(574) ROYER, LELAND W., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

The Court: Would you give your full name to the reporter.

A. W. Leland Royer.

Q. (By Mr. Klein): Mr. Royer, you are an officer of a building and loan association or a savings and loan association?

A. Savings and loan.

Q. What is the name?

A. Calhoun Federal Savings & Loan.

Q. And what is your position with the Calhoun Federal Savings & Loan?

A. President.

Q. And how long have you been President, sir?

(575) A. Since '42.

Q. And were you connected with the association before that?

A. Yes.

Q. In what capacity, sir?

A. In various capacities—bookkeeper and loan officer and various capacities before that time.

Q. How long?

A. Since 1924.

Q. And when was the Calhoun Federal Savings & Loan Association organized?

A. 1919.

Q. And was it a Federal Savings & Loan Association in 1919?

A. No. Federals didn't come into existence until '33.

Q. It became the successor to the state association?

A. Right.

Q. And what was the original capital in 1919 of the Calhoun Federal Association—or the Calhoun Savings Association?

A. Well, at the start they raised about 150 thousand.

Q. And do you know what it was as of December 31, 1952?

A. I have the statement here.

Mr. Klein: Well, maybe we can mark those things.

A. It was 12 million—12 million 349.

Q. (By Mr. Klein): Do you also have with you the published reports of your association for the period from 1947 to 1952, inclusive?

(576) A. Yes (handing documents to Mr. Klein).

Q. And were these published in the newspaper also?

A. Some years yes and some years no back. We put the statement out each year.

Q. For these particular years, I am talking about.

A. I couldn't say that far back.

Q. Wasn't the '52 one published?

A. I couldn't swear as to that.

. . . . .

Q. (By Mr. Klein): Mr. Royer, in your capacity as President of the association—and you were President from '47 through '52, I believe you said?

A. Yes.

Q. Briefly, what were your responsibilities and duties?

(577) A. Well, generally that of the President, running the whole organization. I have had, of course, others who did a lot of the detail work.

Q. And subject to the overall policy of the Board of Directors?

A. Of the Board of Directors.

Q. You were the chief executive?

A. Right.

Q. And you carried out the policies as to the making of loans and the policy about seeking investment shareholders?

You are shaking your head "Yes"?

A. Yes.

Q. And did you have charge or overall responsibility for the financial records?

A. Yes.

Q. I show you documents marked 61-A through 61-F, inclusive, and ask you if they are the annual financial statements of your association for the period ending December 31, and 1947 is 61-A, B is 1948, C is 1949, D is 1950, E is 1951, and F is 1952.

A. Yes.

Q. And were these annual reports—do they correctly reflect the entries on the books and records of the association, and do they truly and correctly reflect the condition of the association as of each of those periods respectively?

A. They do.

Q. They do?

(578) Right.

Q. And were these statements 61-A through 61-F, inclusive, prepared by the association in the regular course of its business, and was it the regular course of its business to prepare such statements of conditions and to publish them to its members?

A. That's right, yes, sir.



Q. And was there any requirement of Federal law that they be either published or mailed to shareholders?

A. The alternate—either published in the newspaper or mailed to the members.

Q. And were these statements 61-A through 61-F, inclusive, mailed to the members pursuant to that requirement?

A. They were either mailed or published in the paper.

Mr. Klein: I would like to offer Exhibit 61-A through 61-F, inclusive.

Mr. Dexter: I would object, your Honor, to the admissibility of these reports as not being just the reports. There is other information contained on them—advertising.

No objection to the balance sheet, as such, if he testified—

The Court (interposing): There is no objection to the balance sheet, as such?

Mr. Dexter: But there are footnotes and there is advertising material on the back.

(579) The Court: I assume it is the balance sheet that you are offering?

Mr. Klein: Primarily at this time. If I wish anything else, I will direct an inquiry. Of course, the footnotes on the balance sheet are part of the balance sheet. I haven't seen what they are, but I assume that is true of balance sheets.

Mr. Dexter: To the extent—and I assume that the witness's testimony verifies and goes only to the balance sheet portion of it—and to the extent, we have no objection, except our objection as to materiality, and particularly that pertaining to years other than 1952.

(580) The Court: The balance sheet part of the Exhibit 61-A to 61-F, inclusive, is in each case received.

Mr. Dexter: Plus our continuing objection that your Honor has stated with regard to these—

The Court (interposing): That is right, under the same conditions as other like exhibits.

Mr. Dexter: The other federal savings and loan balance sheets.

Q. (By Mr. Klein): Mr. Royer, I show you a document marked Exhibit 62 and ask you what that is, sir.

A. That is our annual report to the Home Loan Bank Board.

Q. For what period?

A. For the year 1952.

Q. And is this a pencil copy of the original from which the original was prepared?

A. From which the original was prepared.

Q. And did you in the regular course of your business and as a part of the regular course of your business prepare such report and file it with the Home Loan Board?

A. Yes.

Q. And does it truly and correctly reflect the condition of the association and the other facts therein contained as appear on the books and records of your association?

A. It does.

Q. And did you swear to the original before filing as being (581) correct?

A. I did.

Mr. Klein: I should like to offer Plaintiff's Exhibit 62 in evidence.

Mr. Dexter: We have the same objections, your Honor, as we did to comparable exhibits of other associations and assume that it is going to be admissible subject to your conditions.

The Court: That is right. It is received subject to the same conditions as previous like exhibits.

Q. If the attorney general and his staff wish to check the correctness of either Exhibit 61-A through F, inclusive, or Exhibit 62, would you be agreeable to having him do so at (582) your association office, if he elects to do so?

A. That could be arranged.

Q. (By Mr. Klein): You said, I think, as of 1919 the association started with \$150,000?

A. Yes.

Q. And according to Exhibit 61-F, you had total assets, including reserves and surplus, of \$12,349,000?

A. That is right.

Q. Of which savings accounts or shareholders accounts were \$10,512,000, in round figures?

(583) A. That is right.

Q. Now, I suppose your charter and by-laws as a federal association are standard with all charters and by-laws under the regulation?

A. Yes, sir.

Q. (By Mr. Klein): Now, referring to plaintiff's Exhibit 62, Schedule 6, as of December 31, 1952, it appears that you had 8,085 certificate or investor shareholders; is that correct?

A. That is right.

(584) Q. And they had an aggregate investment of \$10,512,930.98?

A. That is right.

Q. Did any investor in 1952 have to be a member prior to his becoming an investor?

A. I don't know whether prior. They are simultaneous.

Q. And did your association advertise for investors or savings investors?

A. We have, yes.

Q. Did you in 1952?

A. Yes.

Q. And did you advertise pretty extensively in 1952 for shareholder investors?

A. Well, pretty steady rate. We have always.

Q. What media did you use, sir?

A. Newspaper and radio mainly. Some direct mail, some pamphlets.

Q. And how often did you have advertisements in the newspaper?

A. Well, we have run a couple times a week.

Q. And on radio?

A. Spots, occasional spots on the radio.

Q. And did you seek to obtain as many shareholder investors in '52 as you could?

A. We did.

Q. Do you recall whether or not in 1952 or at any time you ever rejected anyone who sought to become a shareholder with your association?

(585) A. Yes, we have.

Q. How many instances?

A. I don't know if it was in '52.

Q. How many instances do you recall, sir?

A. Very few. I recall one or two in particular.

Q. And do you recall the reasons for that?

A. Because the people had been members before and were objectionable.

Q. Other than that one or two, you have never rejected any person who sought to become an investor?

A. That is true.

Q. And as far as assignment of evidence of shareholder, did you ever reject any request for assignment or transfer?

A. No, but as in previous testimony, we have—I don't recall any occasion where they have been assigned except to the bank for security when they would make them a loan.

Q. But you never have had occasion to reject a request at all?

A. I don't think I have had any occasion to reject one.

Q. And certainly you would not have any different standards in passing upon requests for transfer than you would in passing upon applications for new shareholder investments?

Mr. Dexter: Your Honor, if they never had one, I doubt if they have any particular standard set up, other than what would be contained generally in their by-laws.

The Court: The witness can tell us:

(586) A. It is transferable only on the books of the association. For that reason, there just never is an occasion to do it. We have had occasion where people want to borrow from the bank and put up our passbook as security, and those are the only cases I know of where we have accepted an assignment, which was an assignment for collateral rather than actual ownership.

Q. You never had occasion to decide whether you wanted to reject any request or not?

A. That is right.

Q. Do you have any of the forms of ownership that are used to indicate ownership of shares in your association in effect in 1952?

A. I just brought one book along because they are all the same.

Q. I will show you Plaintiff's Exhibit 63 and ask you if it is the type of passbook, savings passbook, and containing the membership certificate, which you described was in effect in '52?

A. That is right.

Mr. Klein: I would like to offer Exhibit 63 in evidence.

Mr. Dexter: Did he say this was in effect in 1952?

Mr. Klein: Yes, he did.

(587) The Court: That is the passbook and contains the certificate?

A. That is right, passbook and a certificate and fly-leaf.

The Court: That would be for a savings account?

A. Yes.

The Court: Not a pre-paid or fully paid?

A. We use the same form, but this exhibit is only for the savings. I didn't bring any of the others along.

Q. (By Mr. Klein): But the certificate is essentially the same?

A. Yes.

Mr. Dexter: Is the information, for instance, on the back identical in 1952?

A. I am not sure about that. That is something we either copied from the old one when we get new ones made up, or make a new draft.

. . . . .

The Court: Received.

(588) Q. (By Mr. Klein): And a person who invested in shares of your association was not a creditor of your association, was he?

A. No.

Q. Did the association agree to pay him any fixed rate of interest?

A. No.

Q. Did you agree to pay him any fixed rate of dividend?

A. No.

Q. What was the rate of dividend paid in 1952?

A. In 1952 we were paying 2%.

Q. And what is the rate paid at the present time—subject to the special record.

A. Three and a quarter per cent.

Q. And has the dividend rate continuously increased?

Mr. Dexter: Would you state from what?

Q. (By Mr. Klein): Up to '52.

A. No, we have gone up and gone down as economic conditions warranted.

Q. And therefore if you made more money in the mortgage business, why, you were able to pay a greater rate of dividends in your business?

Mr. Dexter: Your Honor, he never asked him if he made any money in his mortgage business.

Q. (By Mr. Klein): What was your principal business, sir, in 1952 and prior years?

A. Receiving savings share accounts to raise the money to loan for home loans, encouraging thrift, and promoting home ownership.

Q. Now, we will get into that in just a minute, sir. Did a person have to be an investor in shares in order to be a borrower from your association?

A. Not an investor in shares, no.

Q. And did an investor in shares have to be a borrower from your association? He was not required to borrow?

A. No.

Q. And did a borrower who came to you for mortgages or from whom you sought mortgages in '52 or prior have to be a member before he actually made the loan, or was it simultaneous?



A. Simultaneous.

(590) Q. (By Mr. Klein, continuing): Who did you seek out as far as economic class levels, to make loans to?

A. We didn't seek anyone out.

Q. Well, to whom did you make the loans?

A. To the people that came to us and asked for them.

Q. Did you try to make loans?

A. Our experience has been that we have always been advertising and looking for savings and never have been looking for loans—more than we could handle.

Q. But there were certain years that you made more money in your mortgage business on loans than in other years, isn't that true, sir?

A. That is true.

Mr. Dexter: Your Honor, this question is not limited in any way as to the time.

Q. Up to 1952, and including 1952 that we had surplus funds on hand, during the war, when we couldn't put them out.

Q. And you sought to put them out so as to earn money for your investors?

(591) A. We didn't want to put them out at that time; we bought Government bonds.

Q. You have sought to make as much money for your investors as you could throughout, haven't you, consistent with good business practice?

A. That is part of the business, yes.

Q. In other words, the investors are interested in returns on their investments, aren't they?

A. That is true.

Q. And the more you make in loaning money, or in the operation of your business generally the more return is available for dividends for your investors?

A. I think that is generally true, but—

Q. (Interposing): Yes, sir.

A. —but the character of our business, from time to time the Board determines the policies, and they feel we have just as much obligation to the borrower as to the saver.

Q. Well, let's see what your obligation to the borrower is. The borrower comes to you to borrow money, does he not?

A. That is right.

Q. And you have various types of mortgages on which you loan money, isn't that correct, sir? And I am talking for the period up to and including 1952?

A. Yes.

Q. On what do you determine whether you will grant the loan; (592) what are the factors?

A. Well, the factors, we have consistently had a variable interest rate five or six per cent, and we have tried to determine the loan on the basis of the hazard to the association.

Q. And when money was tight you could be more selective than when mortgage money wasn't tight?

A. We could be more selective, but we still had the five per cent and six per cent rate through all the time.

Q. But you were more selective when the mortgage money market was tight?

A. Naturally, we would pick the lower percentage loan.

Q. And you would get more security for your loan in appraisal value, would you not?

A. We would get more security.

Q. And in 1952, was that a tight money market?

A. I don't remember in fact exactly in 1952 whether it was or not.

Q. What was the average ratio of mortgage to appraised value employed in 1952, in granting loans?

A. I am not sure of 1952, but consistently our ratio has run around 50 to 55 per cent.

Q. Yes.

A. Or—yes, 50 to 55 per cent of selling price.

. . . . .

(593) Q. What was the permissive ratio of loan to appraisal value?

A. 75 per cent.

Mr. Dexter: I think he said, your Honor, that the 50-55 per cent was to the selling price and not appraisal value, and the other testimony has been related to appraised value. Now, there is a substantial difference there.

Mr. Klein: Well, I don't know if there is.

Q. (By Mr. Klein, continuing): Is there a substantial difference, sir, and, if so, please describe it?

A. Our appraisal—we try to base that on market price, which is selling price, and it is our judgment of whether—in our appraisal, whether the market price is right or not. Sometimes we are lower and sometimes we are higher.

Q. Right. Now, I see in Schedule 2—oh, did you have investors of all economic class levels, investors I am talking about, in shares, in 1952?

A. Yes, but the majority were the smaller; our average account is rather small.

(594) Q. Did you put a limit to the amount of your investment?

A. The Board has determined that from time to time. I think at that time they were limiting it to \$25,000.

Q. \$25,000; you would call that small, would you?

A. No, we would call that large, and we didn't have many like that.

Q. I see. And, did you have as investors trustees of estates in 1952, and before?

. . . . .

A. I don't know whether we had—we have at different times had somebody that would sign as a trustee, but very seldom.

Q. (By Mr. Klein, continuing): Did you have corporations as investors?

A. We have had from time to time.

Q. Yes. And, did you have various charitable organizations investing funds as investors?

A. Yes.

(595) Q. And did you have professional men as investors?

A. Yes.

Q. Did you have business executives as investors?

A. Yes.

Q. In fact, you sought investors from any—I will strike that. Did you seek investors from the public in general?

A. Yes.

Q. And the more investors you had, the better you liked it?

A. Yes.

Q. And the more money they would invest, the better you would like it—

A. Yes.

Q. —within your limitations and ceiling isn't that correct?

A. That is true.

Q. And how many votes did the investor have?

A. Fifty, a maximum; the same as the other testimony, one for each hundred or fraction of a hundred, with a maximum of fifty.

Q. What were the standards by which you determined the granting or denial of loans in 1952, secured by mortgages?

A. Well, we followed—after appraisal we determined the percentage of that appraisal we would go, depending upon the person's ability to pay and the security of their job.

Q. You got the financial statement of the applicant?

A. That is right.

(596) Q. And you also determined what his income was? You are shaking your head "Yes, sir"?

A. Yes.

Q. And you determined his general character, I suppose?

A. Yes.

Q. Now, according to Schedule 2 of Exhibit 62, there is an analysis of the first mortgage loans made by your association during the year 1952, is that correct, sir?

A. Yes.

Q. And it shows 716 mortgages, for an aggregate of \$3,009,625?

A. That is right.

Q. Now, under the first column, it shows that there were 48 construction mortgages, for \$261,800, is that correct, sir?

A. That is right.

Q. And it shows 159 mortgages in the aggregate of \$940,675?

A. That is right.

Q. It shows no mortgage for refinancing, is that correct?

A. That is right.

Q. And then it shows 509 mortgages, for an aggregate of \$1,807,150 for other purposes?

A. That is right.

Q. What were those "other purposes"?

A. We didn't— if a person had ample security, we didn't always question them as to what they were going to use the (597) money for. So we didn't keep a record of for what purpose they were borrowing the money.

Q. It could be for buying an automobile?

A. It could be.

Q. It could be for going on a vacation?

A. Yes.

Mr. Dexter: Your Honor, I think the witness has stated he didn't know for what purpose it was, so I suppose it could be for the rest of the night—for anything.

Q. Do you know what is meant by "other purposes"?

A. Well, we put down in that category any loan that we didn't know was to buy a home or to build a home.

Q. Now, what, in your long experience with this association, Mr. Royer—you have had quite a lot of contacts and understanding with and of the mortgage-loaning business, have you not?

A. Yes.

Q. And in the year 1952 what other institutions were loaning money in the Battle Creek area, where you were loaning money, secured by homes, do you know?

A. Well, the other—there is another savings and loan there, and there were commercial banks; there were insurance companies; individuals; different ones that were making mortgage loans.

(598) Q. Do you know whether or not during that period in 1952 the Michigan National Bank was making mortgage loans secured by residences and homes?

A. I don't know for a fact they were; I know at different times they have sent people to us because they were not making them.

Q. Do you know at any time that you had refinanced a loan they had?

A. We have done that at times.

Q. And are there times they have refinanced a loan which you had?

A. That is right.

Q. And that was in 1952 and prior?

A. I don't know about the particular year, but I imagine that was true in that year.

Q. And you know, do you not, that they were loaning money on the same type of property you were loaning money on, secured by mortgages, in 1952?

A. I don't think so; I think at that time they were making mostly FHA, which we were not making.

Q. FHA are longer term mortgages than you are making, aren't they?

A. They can be; some of them are allowed to be made longer.

Q. What was the average term of your mortgages, sir?

A. Up to 1952, our average term was ten to fifteen year maturity.

(599) Q. Yes. And, that varied from ten to fifteen years, you say?

A. Yes, depending on the particular case.

Q. And you had monthly amortization?

A. That is right.

Q. Do you know whether or not the Michigan National Bank made conventional mortgages; is that the type you made?

A. Yes.

Q. Do you know whether they made conventional type mortgages in the Battle Creek area in 1952?

A. I don't know whether they did in 1952 or not.

Q. Did they make them before 1952?



A. I imagine they have; there have been different times I have known of them making them right along; they historically leaned toward the FHA and government-secured mortgages.

Q. Did you make veteran mortgages in 1952?

A. Yes.

Q. Secured by homes?

A. That is right.

Q. And do you know whether or not the Michigan National Bank made that type of mortgage in the Battle Creek area in 1952?

A. I don't know about 1952, but I know they did not make them for quite a while when we were making them.

Q. You wouldn't say they didn't make them?

A. I don't know about 1952, whether they were making them yet (600) then or not.

Q. But you do know that they made mortgages which refinanced mortgages on homes?

Mr. Dexter: I think he said he did not.

Mr. Klein: I think he said he did, and I want to make sure.

A. Yes, we have given them discharges and they have come over to pay us off, and they have given us discharges and paid us off.

The Court: This is refinancing of a Michigan National Bank mortgage?

Mr. Dexter: Did you do that in 1952?

A. No, I don't know if we did it in 1952.

Q. (By Mr. Klein, continuing): Did you do it prior to 1952?

A. I imagine we have; I don't know the dates.

Q. Isn't it true that in 1952 your Association made mortgage loans as high as \$30,000?

A. You mean to one individual?

Q. Yes, sir.

A. No, I do not think so.

Q. You wouldn't say that wasn't so?

Mr. Dexter: Well, your Honor—

Mr. Klein (interposing): I am asking to be sure whether the witness is sure.

A. I am not sure, but I doubt it.

Q. You are not sure. What is your present recollection of the (601) highest mortgage you made in 1952?

A. I wouldn't have any idea.

Q. What was the general average amount?

A. We followed a policy of ten thousand top for a long time. Now, whether we had gone beyond that in 1952 or not, I don't know. Only one loan of that size that I remember of, and that was a commercial loan that had been turned down by the local banks and refused, and we took it.

Q. You made a commercial loan?

A. Made one commercial loan, I remember of, that had been—we had sent them to the bank and they were turned down and so we made the loan.

Q. When was that, sir?

A. I don't remember when.

Q. Don't remember when. Do you have safe deposit boxes in your—

A. (Interposing): No.

Q. Do you sell or redeem U. S. Savings bonds?

A. Yes.

Q. Do you issue money orders and traveler's checks?

A. Yes.

Q. Do you have Christmas and vacation club savings plans?

A. We have a Christmas Club.

Mr. Dexter: This is in 1952?

(602) Mr. Klein: In 1952.

Q. What was your practice after you obtained a mortgage in 1952 about recording it?

A. We always recorded it immediately.

Q. Immediately. And, Mr. Dexter has been asking questions of whether or not you made construction loans?

A. Yes.

Q. To builders?

A. Some to builders, but mainly to ultimate home owners.

Q. Did you make any to finance companies?

A. No.

Q. And in connection with construction loans, did you pay out all the money at one time?

A. No; the money was released as the building progressed.

Q. And how long would it normally take before all of the mortgage money was paid out on the mortgage as the building progressed?

A. Generally three to six months.

Q. And I am not sure whether I covered this. Is this a fair statement, that shareholders, it was not necessary for them to become borrowers, and it wasn't necessary for borrowers to become shareholders?

A. That is right.

Q. That is correct. Now, in 1952 did your association pay any personal property tax?

A. Yes.

(603) Q. What was the tax, and what was the assessed value of the property?

A. It was the furniture and fixtures.

Q. Yes, sir.

A. Assessed at \$12,000.

Q. And your tax, that is an ad valorem property tax?

A. We paid three different ones, but one of them was for the year '51, which wasn't due until after the first of the year; do you want that in there?

Q. I want the 1952.

A. That was due in 1952.

Q. Yes.

A. That was \$339.54.

Q. Did you pay an ad valorem real estate property tax upon your real estate?

A. Yes.

Q. And that was based upon the assessed value, was it not?

A. That is right.

Q. And that was at the same rate as all other real estate in Battle Creek was subjected to the same tax, the same rate?

A. Yes.

Q. Did your association pay an annual privilege fee to the State of Michigan in 1952? I am talking about privilege fee as distinguished from intangibles tax?

(604) A. I do not think that went into effect until 1955.

Q. You didn't then pay it in 1952?

A. No.

Q. Did your association pay an intangibles tax on its shares, paid in amount of shares, plus reserves, for the year 1952?

A. Yes.

Q. Do you know the rate at which you paid?

A. 40 cents a thousand.

Q. Forty cents a thousand?

A. Yes.

Q. What was the general area in which your association conducted its business?

A. Our Federal charter allows us to go on a fifty mile radius. Our policy has varied from time to time; usually we have kept it within a five to ten mile radius.

(605) Q. Looking at your liability statement, did your association have any borrowings outstanding from the Federal Home Loan Bank as of December 31, 1952?

A. Yes; \$500,000.

Q. Was that the maximum borrowings you could make?

A. No.

Q. What were the maximum borrowings you could make as of that time?

A. Half of share capital, which was about five million.

Q. You could have borrowed \$5,000,000?

A. Yes.

(An advertisement was marked Exhibit 64 by the reporter.)

Q. (By Mr. Klein): I will show you Plaintiff's Exhibit 64 and ask you if this was an advertisement of the kind which was published in the Battle Creek newspapers in 1952 by your association?

A. That is evidently a photostat of one of our ads, yes.

Q. Which you published in '52?

A. I don't know when it was published.

Q. Was it published prior to '52?

A. I don't know that. It would have had to have been in '52 or prior, because we built a new building the next year.

Q. I am showing you a certificate on the back end of this exhibit as to where it appeared. Would this refresh your memory as (606) to when it appeared?

A. No, I wouldn't have any idea of the dates. It looks like one of our ads, but as to the date when we put it in, I—

Q. (Interposing): Is this a fair picture of the building which you occupied in 1952?

A. Yes.

Q. And I understand you now have a new and more impressive looking building?

Mr. Dexter: Your Honor, that isn't limited to time.

Q. (By Mr. Klein): When did you build—did you build a new building since then?

A. We built a new building, yes.

Q. When?

A. In '53.

. . . . .

Q. (By Mr. Klein): Did you have counters inside of your offices like a bank?

A. Well, not just like a bank. I think ours are nicer, more (607) homey looking.

Mr. Klein: I should like to offer Plaintiff's Exhibit 64 in evidence for the purpose solely of showing the picture of the building, and we can delete the rest of it if you wish.

Mr. Dexter: Mr. Klein, would you just scissor this out, then?

Mr. Klein: Sure, you can scissor it out.

The Witness: One thing: You asked me our borrowing capacity in '52. I was giving you the maximum legal limit.

Mr. Klein: Yes.

-The Witness: But at that time the Home Loan Bank had put a limit on, and I don't know in '52 just what that limit was, but I think it was 10 per cent instead of the 50 per cent, the borrowing capacity.

Q. (By Mr. Klein): You don't know?

A. I don't know.

Q. In any event, you hadn't borrowed the full 10 per cent, either, had you?

A. Well, it was very close to the 10 per cent.

Q. Well, you had \$10,000,000 and you had borrowed 500,000?

A. Well, if it was 10 million, but you can borrow half of that, so 5 million was our limit, and if it was 10 per cent instead of 50 per cent, it would have been one-fifth of that, which would have been 1 million.

(608) Q. One million?

A. Yes.

Q. But you don't know whether that was it?

A. I'm not sure at that time. The Home Loan Bank rules change from time to time.

Mr. Klein: That's all, sir. Thank you.

. . . . .

(609)

*Cross Examination*

By Mr. Dexter:

Q. As I understand it—I am going to try to go rather hurriedly here—that your shares may be assigned, but they can be (610) assigned only with the consent of the association; is that correct?

A. That's right.

Q. And that they are redeemed or repurchased at the option of the association?

A. Yes.

Q. And at the time they are redeemed or repurchased, it is at the face amount of the shares—that is, the dollar amount—plus the declared dividends that have not been paid?

A. That's right.



Q. And you have the power to refuse anyone to become a shareholder?

A. That's right.

Q. Now, generally, what is the nature of your assets and liabilities? You run down those quickly, if you will.

Let me ask you this: Are your assets and liabilities those that are disclosed on Plaintiff's Exhibit 62?

A. Yes, they were on December 31, 1952.

Q. And that is a general description of your assets and liabilities?

A. Yes.

Q. Do you know what cash reserves and deposits you are required to keep?

A. It may not be—

Q. (Interposing): My questions relate to the year 1952. You (611) understand that?

A. Yes. 6 per cent.

Q. What are your sources of capital and borrowed money?

A. The general public.

Q. But your shareholder accounts are your sources of capital?

A. That's right. Borrowed money, we can borrow from a commercial bank or from the Home Loan Bank.

Q. And did you do any borrowing from other than the Home Loan Bank for the year 1952?

A. I don't think we did in '52.

Q. But Exhibit 62 would indicate that if there was such an outstanding indebtedness?

A. That's right.

Q. Now, as I understand, the evidence of ownership that a shareholder has is indicated by Exhibit 63 in the passbook?

A. That's right.

Q. Is that the only evidence of any ownership of any type of share that you have outstanding?

A. We have a certificate form which says the same thing practically but—

Q. (Interposing): In different form?

A. Different form, but it is for the, as you call it, full-paid account or lump sum investment.

Q. Rather than the savings account?

A. Yes.

(612) Q. You don't maintain checking accounts for your customers?

A. No.

Q. And you don't guarantee interest to your shareholders, I understand?

A. No, or dividends.

Q. Nor dividends, neither. And your shareholders don't have the right to withdraw their deposits on demand; is that correct?

A. There are stipulations that we can take them. Our policy is to keep liquid enough so they always can.

Q. But they do not have that right?

A. That is right.

Q. And your shareholders are not creditors?

A. No.

Q. And where do you keep the cash you are required to have on hand for business needs?

A. We keep some in the Home Loan Bank, some in the Michigan National, and some in the Security National.

Q. And for the year 1952, can you indicate the amount of cash you had on hand in banks by reference to your balance sheet?

A. Let me ask you, would that be indicated in your balance sheet, the amount of cash you would have in the banks?

A. Yes.

Q. And that would be the Michigan National Bank?

A. And the Security National and the Home Loan Bank.

Q. And they would not be segregated on the balance sheet?

(613) A. No.

Q. Do you know approximately how that segregation was for the year '52?

A. No, but we have tried to carry around a hundred thousand in each of the commercial banks and the balance in the Home Loan Bank.

Q. Now, are the accounts kept in the commercial banks regular commercial accounts?

A. Yes.

Q. And are those accounts drawn on to pay the money to borrowers that come in and borrow?

A. To borrowers and to pay withdrawals on savings.

Q. In other words, you use a regular checking account service for those purposes?

A. Yes.

Q. And I suppose to pay your other expenses, and so forth, of the association?

A. Yes.

Q. I understand a very small percentage of persons who borrow from your association are members. Is that correct?

A. I don't know how big a percentage. We have made quite an effort to have every borrower have a savings account to accumulate for taxes and emergencies.

Q. In other words, you consider both aspects of your business—that is, getting shares and—

(614) Mr. Klein (interposing): I object to the form of the question. The witness didn't say that at all. I object to it.

Q. (By Mr. Dexter): Did you consider those two aspects of your business related—that is, your lending policies and your policy of getting shareholders?

A. Well, there is some relation there, yes.

(615) Q. What would be that relationship?

A. The relationship would be so we don't have such a collection problem after we pay taxes.

Q. Has it anything to do with the general purpose of your organization?

A. No.

Q. Do you know the general purpose of your organization?

A. Promote thrift and home ownership.

Q. And you would try to get share savings accounts to promote thrift; is that right?

A. That is right, whether they are borrowers or whether they aren't.

Q. But there is no direct relationship between the two so far as you are concerned?

A. No.

Q. I understand you require a financial statement from a borrower before loaning money to him?

A. Yes.

Q. He becomes a member of the association at the time the money is lent, simultaneously?

A. That is right.

Q. And membership is the same way in regard to shareholders, that is, they become a member at the time they become a shareholder?

A. That is right.

Q. You don't loan money to finance companies?

(616) A. No.

Q. And is all of your loan secured by mortgages on farm and residential property?

A. The bulk of it. Our federal charter allows us to loan up to 15% of our loans on other than strictly residences, which would include any commercial loans. Our policy has been to make practically none of those. We specialize in home loans.

Q. All your loans are secured by real estate, regardless of the purpose?

A. First mortgage loans on real estate.

Q. First mortgage loans on real estate. You are not permitted to borrow from the Federal Reserve System?

A. No.

Q. You are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes.

Q. Are you insured by any agency of the government, that is, your shareholders?

A. Federal Savings and Loan Insurance Corporation.

Mr. Klein: Would you say to what amount?

Q. (By Mr. Dexter): To what amount are the shareholders insured?

A. Up to one thousand.

Q. Do you know the number of employees you have?

A. Twenty-six.

Q. What was the amount of real estate valuation of your property (617) taxes paid in the year 1952 on your real estate?

A. I don't have those figures with me. I have the personal property tax.

Q. You don't have the real estate figures?

A. No.

Q. Do you know what the average size of your mortgages were that you took in 1952?

A. The year of '52 our average mortgage was \$4,190.81.

Q. And as of December 31, 1952, what was the average of all your mortgages?

A. \$3,026.70.

Q. And for the share accounts opened in '52 what was the average balance?

A. \$745.50.

Mr. Klein: That is the account that is opened in '52?

A. The ones opened in '52, the average balance, \$547.35.

Q. (By Mr. Dexter): And the other figure you gave was the average of all your accounts?

A. All the accounts.

Q. As of December 31, 1952?

A. No, this year. \$745.50 is the average.

Q. You don't have it for '52?

Mr. Klein: It is right here in the report. 8,085 accounts had \$10,512,000, which is about \$1,200, or (618) little more than \$1,200 average.

Q. (By Mr. Dexter): The average is \$1,330. Let me ask you this: generally do you carry out the purposes set forth in the statutes under which you operate and your by-laws and the rules and regulations of the Federal Home Loan Board?

A. We do.

Q. The purposes of your association and what you actually do are in accordance with those purposes?

A. That is right.

Q. As expressed in the regulations and statutes and by-laws?

A. Yes, sir.

Mr. Dexter: Your Honor, that is all I have, subject to the right—

Mr. Klein: One question.

*Re-direct Examination*

By Mr. Klein:

Q. It has been asked of you whether your association had the power, the association had the power to redeem or purchase shares from shareholders at its option, and I think you testified the association did have that power?

A. That is right.

Q. Did it exercise that power in 1952?

A. I don't think we ever have required anybody to—well, we (619) have, but we didn't in 1952.

Q. And even in the past did you exercise that power very much?

A. Not very much.

Mr. Klein: That is all.

(623)

Lansing, Michigan,  
Thursday, May 22, 1958,  
9:00 o'clock A. M.

(The hearing of this cause was resumed pursuant to the adjournment.)

Mr. Klein: Ready, sir?

The Court: Yes, you may proceed.

Mr. Klein: If it please the Court, we have had marked and now offer into evidence Exhibits 65-A, 65-B, 65-C, 65-D, 65-E and 65-F.

(624) Exhibit 65-A is an abstract and summary of all real estate mortgages recorded at the office of the Register of Deeds in Calhoun County, Michigan, for the calendar year 1952, and shows the name or names of each mortgagor, of each mortgagee and the principal amount of each recorded mortgage.



The names and amounts are listed from page 3 through page 65 of Exhibit 65-A in the chronological order in which they were recorded in the Liber of Mortgages of the Register of Deeds' office of said county, and as is more particularly described in the notice of intention originally served by plaintiff in February, 1958, and again re-served upon counsel for defendant on April 23, 1958, pursuant to second notice of intention which was filed after the Supreme Court of Michigan approved the Court of Claims rules.

Similarly, Exhibit 65-B is a similar type of abstract and summary of all real estate mortgages recorded in Genesee County, Michigan, with the Register of Deeds there, in the Liber of Mortgages as described in the aforesaid notice of intent, and the summaries which we offer appear from pages 67 through pages 207 of Exhibit 65-B.

Similarly, Exhibit 65-C is an abstract and summary of all real estate mortgages recorded in Ingham County in the calendar year 1952 in the Liber of Mortgages at the (625) Register of Deeds' office for Ingham County, and the abstracts and summaries to which we refer in Exhibit 65-C commence at page 210 and continue through page 291.

Exhibit 65-D, similarly, is an abstract and summary of all real estate mortgages recorded in Kent County, Liber of Mortgages, at the office of the Register of Deeds of that county for the calendar year 1952, and the portion we are now offering commences from pages 293 and continues through page 424.

Exhibit 65-E is a similar summary and abstract of all real estate mortgages recorded in the Liber of Mortgages in St. Clair County, Michigan, in the calendar year 1952, and the abstracts and summaries we are

offering now appear at pages 503 through pages 553 of Exhibit 65-E.

Similarly, Exhibit 65-F is an abstract and summary of all real estate mortgages recorded in Saginaw County, as appears in the Liber of Mortgages, the Register of Deeds' office of Saginaw County, for the calendar year 1952, and the portion we now offer commences at page 426 and continues through 501.

Copies of these abstracts and summaries of the recorded mortgages in the aforesaid counties were delivered to counsel for defendants in early February, 1953, and are referred to in the aforesaid notices of intention to offer (626) as evidence under Rule 10 of the Rules of the Court of Claims.

Exhibits 65-A through 65-F are offered to show, one, the names of the mortgagors, the names of the mortgagees, and the principal amounts of all real estate mortgages recorded in each of the said six counties in the calendar year 1952; two, to prove as prima facie proof the existence of said mortgages, and that the principal amounts of said mortgages were paid by the mortgagees there named to the mortgagors, or committed to be paid by the mortgagees to said mortgagors.

A column appears in each of these exhibits describing whether or not the mortgages are on residential property, farms or businesses.

At this time, except for the proof already adduced from the savings and loan associations as to the character of the property covered by the mortgages, the description of the type of property in respect to the other mortgagees, as appears on the exhibit, should not be considered in the offer at this time. The plaintiff intends to furnish proof as to the character and type of property securing its mortgages—that is, the mortgages in which

it is the mortgagee, described in said exhibits, as we offer the rest of the proof.

The Court: That concludes the offer?

(627) Mr. Klein: That is the offer.

The Court: All right, Mr. Attorney General.

Mr. Dexter: Well, for the reasons I have already stated in response by matter of brief, and by this Court's opinion dated the 20th day of March, 1958, concerning the admissibility of such alleged or purported abstracts, defendants object to the admissibility of the same.

In the first place, we do not believe there has been any foundation laid this morning in regard to what these are, except Mr. Klein's statement that they are abstracts and summaries. There is nothing to authenticate them otherwise than the statement of counsel.

We simply assert they are not the best evidence of the thing they are trying to prove, . . .

. . . . .

(651) The Court: . . . So the exhibits will be received, subject to this: After these rules were adopted the last time, or the only time they were ever adopted, I guess, I wrote a letter to you gentlemen and told you that it had been called to my attention that they had been adopted, that I was in the midst of a trial term and I didn't have time to dispose of this matter finally, and I suggested that the matter be held in abeyance and taken up at the time that the case came up into court, and that I would give them such additional time as might be necessary to meet my rule.

So that while I am ruling that I am going to accept these, I am still ruling that the Attorney General, because of the fact that previously I indicated that I might (652) not, probably would not, that the Attorney General still has the time to make such inspection as he

wishes, such check on the accuracy of these summaries as he wishes to do before we finally accept them in evidence. Ordinarily you try to do that before trial, but it was the action of the court that made it unwise, at least, for you to go ahead and do it, so we are going to have to adjourn this case, of course, until July or some other time to finish up the plaintiff's proofs, and that will give you some time to make any check that you want to, and I may assure you that you will have all the time that you need within reason to make any check that you want to on the accuracy of these things.

But subject to your rights in that respect, the abstracts, which are Exhibits 65-A, B, C, D, E, and F will be received under the provisions of Rule 10.

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(656) PHEIFFER, EUGENE, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Van Zile:

Q. By whom are you employed, Mr. Pheiffer?

A. Saginaw Savings and Loan Association.

Q. And that is located in Saginaw, Michigan?

A. Yes, sir.

Q. And what is your capacity with that Association?

A. Executive vice-president and secretary.

Q. How long have you held that position with the Association?

A. Since January 2, 1951.

Q. And what was your occupation prior to that?

A. I was a trade association executive for the United States Savings and Loan League in Chicago.

Q. So that you have been employed by the Association since 1951, is that correct?

(657) A. Yes, sir.

Q. Now, I will ask you where the Association is located.

A. 219 South Michigan Avenue, Saginaw.

Q. And how long has it been located there?

A. Since about August of 1952.

(A photograph was marked Plaintiff's Exhibit 66 by the reporter.)

Q. Mr. Pheiffer, I will show you what has been marked Plaintiff's Exhibit 66 and ask you if you can identify that?

A. Yes, that is our building.

Q. And is that the same building that you have been referring to that was built in August, 1952?

A. That was started in '51, completed in '52, so we will have no misunderstanding.

Mr. Van Zile: I will offer Plaintiff's Exhibit 66.

Mr. Dexter: No objection, except the continuing one, your Honor, as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): In what area does your Association operate?

A. Saginaw County, with approximately ten loans outside of Saginaw County.

Q. I perhaps should have rephrased the question to be more exact. Where are your savings members located generally, Mr (658) Pheiffer?

A. Saginaw and the surrounding area.

Q. And where are your borrowing members located?

A. Saginaw County, with approximately ten loans outside the county.

Q. When was your Association founded?

A. January 26, 1888, I believe.

Q. So that your Association was one of the first Associations formed in the State of Michigan; is that correct?

A. I really don't know.

Q. Do you know when the savings and loan act—building and loan act was first enacted in the State of Michigan?

A. No, I don't.

Q. Do you have your charter with you?

A. Yes, I do.

(The charter was marked Plaintiff's Exhibit 67 by the reporter.)

Q. I will show you what has been marked Plaintiff's Exhibit 67 and ask you what that is?

A. That is our charter.

Q. Is that your original charter, Mr. Pheiffer, the charter as originally drawn of the Association? Will you look at the certificate.

A. No, it is not the original. It has been compared to the (659) original on file in the office, and it is a true and correct copy of the original filed with the Department of State, so I assume it is not the original. It is a true copy.

Q. I misspoke myself. Is it a true and correct copy of the original charter filed in 1888?

A. Yes.

Mr. Van Zile: I offer Exhibit 67.

Mr. Dexter: No objection except the continuing one, your Honor.

The Court: Received.

Q. (By Mr. Van Zile, continuing): Do you know the amount that was originally subscribed and paid in as capital?



A. No, I do not.

Q. Are you familiar with the manner in which this Association operated after it was first incorporated?

A. I really don't think I am.

Q. You have no knowledge of that?

A. Specifically, Saginaw Savings & Loan?

Q. Yes.

A. I would say "No."

Q. Is there anyone connected with the Association that has such knowledge now?

A. No, because it was formed seventy years ago and none of the original people founding it are now living.

(660) Q. So that you wouldn't know of your own knowledge whether this Association operates as it first did, is that correct, Mr. Pheiffer?

A. That is correct.

Q. Did you bring with you copies of your by-laws, Mr. Pheiffer?

A. I brought copies of the by-laws for 1957, 1952, and as they are current today.

Q. Pardon me. Did you want to say something?

A. No.

Q. Do you have, or does your Association have in its possession copies of earlier by-laws?

A. I had no reason to find out until late yesterday afternoon, your Honor, on a call, and the person in charge who really handles this had to go to the doctor, and I am sure we have them on file, and I am sure they are on file with the Secretary of State's office.

Q. You think they are on file?

A. It is my opinion they are.

Q. If it turns out they are not, and we ask you, would you supply us with copies of those earlier by-laws?

A. If we have them in our files.



Q. That is what I mean. Do you have a copy of the by-laws under which you operated in 1952?

A. (Producing document).

(A document, By-laws of Saginaw Savings & Loan (661) Association, 1952, was marked for identification by the reporter as Exhibit 68.)

Q. (By Mr. Van Zile, continuing): I will show you a document marked Exhibit 68 and ask you what this is?

A. By-laws of the Saginaw Savings & Loan Association in effect in 1952.

Mr. Van Zile: I will offer Exhibit 68.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Van Zile, continuing): I take it from your previous answers, Mr. Pheiffer, you are not familiar with the changes that have occurred, if any, in the by-laws over the course of years?

A. No, I am not; since 1888?

Q. Yes.

A. You are referring to?

Q. Yes.

A. No, I am not familiar with them.

Q. May we retain Exhibit 68 for our files?

A. Yes, sir.

. . . . .  
(663) Q. (By Mr. VanZile, continuing): How do you derive your capital, Mr. Pheiffer?

A. Through the investment by our shareholders.

Q. And they invest in shares in your association, is that correct?

A. Yes, sir.

Q. What class of shares?

A. We have optional and full paid.

Q. You have no advance payment shares?

A. No, sir.

Q. How long is it since you have had advance payment shares?

A. We haven't had advance payment shares during my period as manager since 1951.

Q. You have no reserve shares?

A. No.

Q. No installment shares?

A. No, sir.

(664) Q. And as the name indicates, I take it that these are shareholders, these investors; is that right?

A. Yes, sir.

Q. And their shares are shares of stock?

A. Yes, sir.

. . . . .

(665) Q. (Interposing): Is the shareholder a creditor in your association—a creditor of your association?

A. They have equity in the association.

Q. Are they creditors of the association?

A. I don't see where someone who has—they have an equity in the association?

Q. Are you allowed to accept deposits?

A. No, sir.

Q. Are you allowed to pay interest?

A. No, sir.

Q. Do you guarantee the payment of your dividends?

A. No, sir.

Q. In fact, there is no guarantee whatsoever that there will be any dividends; isn't that right?

A. I don't think it is necessarily right, when you have reserves and some undivided profit.

Q. Do your shareholders share the risk of loss in the event that there is a loss encountered by your association?

Mr. Dexter: Your Honor, I think that is a hypothetical question.

A. Our accounts are insured by the Federal Savings & Loan Insurance Corporation, and those that would not be never would have the chance to share the loss.

(666) Q. (By Mr. Van Zile): How are your shares represented?

A. By full-paid certificates and by optional pass-books.

Q. Are those certificates different in any respect than those of other state associations?

A. I really don't know. I have never compared them all. They are approved by the Secretary of State and have been submitted to him for—

(667) Q. (By Mr. Van Zile): I will show you these exhibits and ask you what they are?

A. A full-paid certificate as used in 1952, and a savings passbook as used in 1952.

Q. So that 69-A is the fully-paid certificate, and 69-B is the optional savings passbook; is that correct?

A. Yes, sir.

Mr. Van Zile: I will offer these into evidence.

Mr. Dexter: As I understand, the offering of Exhibit 69-B is in reference to the certificate portion?

Mr. Van Zile: It is the whole exhibit.

The Witness: With that should be a savings signature card.

(A savings signature card was marked Exhibit 69-C by the reporter.)

Q. (By Mr. Van Zile): And Exhibit 69-C is the so-called signature card; is that right?

A. Yes, sir.

(668) Q. And does that accompany the optional savings passbook?

A. It can accompany the optional or the full-paid, as you can see.

Mr. Van Zile: All right.

I will offer Exhibit 69-C.

Mr. Dexter: No objection except the continuing one to 69-A, B and C.

The Court: Received. All three exhibits received.

Q. (By Mr. Van Zile): The fully-paid certificate requires an investment in multiples of \$100; is that correct?

A. Yes, sir.

Q. The optional savings account can be opened for any amount?

A. Yes, sir.

Q. One dollar and up?

A. Yes, sir.

Q. Is there any limit on the amount that you will accept for investment in your association?

A. If we were offered a rather large amount of money, we might well take it up with the Board of Directors whether we would be willing to accept it.

Q. Have you ever been offered too much money?

A. Yes, sir.

Q. When?

A. In 1951 we were offered a large amount of money by a gentleman. We only agreed to take part of it.

(669) Q. How much did he offer?

A. He offered us \$100,000, and we would only take fifty.

Q. How many votes does each share have in your association?

A. One vote.

Q. For how many shares?

A. What is that, now?

Q. For how many shares? One vote for each share, is that what you are saying, or what?

A. Yes, one vote for each share.

Q. So that whether you have \$50,000 or \$1, you still have the same vote?

A. Oh, no. There is one vote for each hundred dollars that you have in the association. If you have \$10,000, you have 100 votes.

Q. So that your 100,000 offer would have carried with it a thousand votes; is that correct?

A. Yes.

Q. Now, do you advertise for shareholders for investments in your association?

A. Yes, we do.

Q. And by what means?

A. The largest amount of our expenditures for any advertising is through the newspapers.

Q. I might add, Mr. Pheiffer, so that we will understand each other, unless I expressly direct otherwise, my questions are (670) directed to the year 1952.

A. All right.

Q. Now, do you seek savings from all classes in the community or from some particular class?

A. We seek from all classes.

Q. And you understand what I mean by "classes"?

A. I assume you are referring to income groups.

Q. That's right. Is it necessary for a borrower from your association to be an investor? Do you understand what I mean?

A. An investor on the savings side?

Q. Yes.

A. No.

Q. Is it necessary for a borrower to invest any money as a condition of securing a loan from your association?

A. Generally not.

Q. What do you mean by that?

A. Oh, there can be times that he might. If there is a savings account, we would come nearer to making him a loan.

Q. Well, you mean you would increase his net worth and his desirability as a borrower from the association?

A. Yes.

Q. But it is not a requirement of your association that he invest any money in your association, is it?

A. Not in the year 1952.

Q. Was it before 1952, to your knowledge?

(671) A. No. Since.

Q. What types of loans do you make, Mr. Pheiffer?

A. In 1952, 95 per cent or more of our loans were conventional loans, and I would think I would be safe in saying 98, but I am positive in 95.

The Court: I didn't catch the type.

A. Conventional loans, sir.

Q. (By Mr. Van Zile): And conventional loans on the security of what?

A. Residential real estate.

Q. Located in the greater Saginaw area; is that right?

A. Yes, sir.

Q. And what kinds of real estate? By "residential," what do you mean, what classes of homes?

A. Generally single family.

Q. And covering again all types, all classes of homes, so to speak?

A. Define the word "classes."

Q. Well, by that I mean did you loan on homes across the railroad tracks, or did you loan across the board in Saginaw?

A. In my opinion, our institution has the best record of loaning across the board to all classes of people.

Q. Now, you say you had no FHA or VA or other Government insured types of loans in 1952 to speak of. Is that what you said?

A. Just let me check my record. I realize I have a record.

(672) More specifically, at the end of 1952 we had \$5,200,000 worth of conventional loans, and until that time—I am off a little bit on my percentage—we had \$535,000 worth of G.I. loans at the end of 1952.

Q. And how many FHA's?

A. No FHA's. On FHA Title II, I assume you are referring to?

Q. Improvements.

A. FHA Title II, we had none.

Q. Did you have any FHA improvement loans?

A. None.

(An Annual Report was marked Exhibit 37-N-1 by the reporter.)

Q. (By Mr. Van Zile): I will show you first, Mr. Pheiffer, what has been marked Exhibits 37-N-1 and 37-N, both being Annual Reports of your association, and I will ask you whether those reports, as of the dates indicated in the reports, truly and correctly represented the financial condition of your association as at those dates?

A. Yes, sir. I assume the reports are the same as completely signed and filed at that time and there have been no changes.

Q. And they bear your signature?

A. Yes, sir.



Q. Under oath?

A. Yes, sir.

Q. And notarized?

(673) A. Yes, sir.

Q. Were these two reports prepared in the customary course of your business and as a regular course of business? By that, did you make one of these reports out each year?

A. Yes, sir.

Q. You were required to do so by law; is that right?

A. Yes.

Q. And they correctly and truly summarize the entries appearing on your books and records; is that correct?

A. Yes, sir.

Q. And I will show you Exhibit 36-J, which is the Monthly Report for the month of December, 1952, and ask you if that truly and correctly represented the financial condition of your association as at the date indicated in the report?

A. Yes, sir.

Q. And that is signed by you?

A. Yes, sir.

Q. And under oath; is that correct?

A. I guess that is under oath in my terms.

Q. And it was required by law to be filed with the Secretary of State?

A. Yes, sir.

(675) Mr. Van Zile: We will offer Exhibits 37-N and 37-N1- in evidence.

Mr. Dexter: I assume, your Honor, that these will be received subject to your prior ruling on the other documents?

The Court: Same ruling as on the other annual reports.

(676) The Court: Let's not take the time now; let's go ahead. At any rate, you are making the offer as far as this institution's reports are concerned?

Mr. Van Zile: Yes.

The Court: And they may be received subject to the objection of Mr. Dexter. I make the same ruling. It is understood he objects to each and every one of them on the (677) grounds previously stated.

Mr. Van Zile: They may be received subject to that objection?

The Court: Yes, sir.

Q. (By Mr. Van Zile, continuing): Mr. Pheiffer, could you tell me what you base your last statement on that so much of your loans during 1952 were VA and none were FHA?

A. On our monthly report.

Q. On your monthly report?

A. Which gives our statement of condition as of December 31, 1952.

Q. And does that show how many VA and FHA loans you had?

A. Yes, sir.

Q. And does the annual report show similar information?

A. I really don't know without examining the report.

Q. Would you examine those two reports and tell me if it does? (Handing documents to the witness.)

A. O. K. (Examining documents)—yes, sir.

Q. They both do?

A. This one does (indicating). (Examining document.) You are handing me the reserve section. What does this have to do with loans?

Q. Well, I am handing you the whole report; you can look through the whole report if you like?

A. You want to know for the year 1952?

A. Yes, sir.

(678) Mr. Dexter: I would suggest, your Honor, that these reports speak for themselves and we won't try to bring out any testimony—

A. (Interposing): Fiscal year ending June 30, 1952, we had no FHA Title 2 insured loans.

Q. (By Mr. Van Zile, continuing): How about the VA?

A. We had VA loans.

Q. Are those loans that were taken during 1952?

A. No, those had been accumulated.

Q. My question to you is, is there anything in these reports that tells us how many VA loans were taken in 1952?

A. To the best of my knowledge, there is no information here which shows which loans were taken in 1952.

Q. You say most of your loans were conventional, is that correct?

A. Yes, sir.

Q. And could you give us some idea of the average term of your conventional loans? By "term" I mean term of years.

A. Fifteen years.

Q. That is your average?

A. No, that is not our average. I assume our average was around fourteen and a half; most of our loans were made in 1952 on a fifteen-year term, occasionally a shorter term. I have never taken the time to figure out the average.

Q. Well, the answer is you don't know what your average is, is (679) that correct?

A. I am not quite that stupid; I know it is between fourteen and sixteen; I know the average loan isn't seven.

Q. What rates of interest were you charging in 1952?

A. The most frequent rate was five per cent.

Q. And your rate of interest varied then?

A. Yes, sir.

Q. Why?

A. Occasionally we had a loan at five and a half or six per cent.

Q. Now, did you save so-called open-end mortgages in 1952?

A. Yes, sir.

Q. You made no FHA loans, is that correct?

A. No, sir.

Q. Either improvement loans or Title 2?

A. We made no Title 2's, and during the year 1952 we made no Title 1—oh, pardon me, I will correct my statement. No, at the end of 1952 we had 39 FHA Title 1 loans, amounting to \$22,450.

Q. As a matter of fact, you were advertising for FHA loans in 1952, were you not?

A. Well, you can see the extent of our program during the year. I don't remember when we started it, but we had thirty-nine loans which averaged about five hundred dollars apiece.

Q. Did you advertise for loans, FHA loans, such as we have been (680) talking about, in 1952?

A. We never keep an advertising file, and I would have to go through the Saginaw News file and check every page to see what our advertising plan was during

that year. We do not clip our own ads, or have them clipped and sent to us.

. . . . .

Q. (By Mr. Van Zile, continuing): I will show you what has been marked Exhibits 70-A and 70-B.

A. One is described as an open-end mortgage plan offered by the Association; and the other is describing the open-end mortgage as well as an FHA loan on the Title 1 loan program.

Q. Did advertising similar to that appear in Saginaw papers in 1952?

A. To a very limited extent.

Mr. Van Zile: I will offer Exhibits 70A and 70-B.

Mr. Dexter: I object, your Honor. There is nothing to indicate that these particular ads were in 1952.

Mr. Van Zile: The witness has vouched for them.

Mr. Dexter: No, he didn't say these were 1952 ads. I do not think he testified at all exactly as to these exhibits.

(681) Now, if you want to ask him, Mr. Van Zile—  
The Court (interposing): He said "of that type," did he not; I understood him to.

Mr. Van Zile: My understanding is that these exhibits were similar to exhibits that appeared not too often in the Saginaw papers.

A. Do not put words in my mouth, please.

Q. (By Mr. Van Zile; continuing): All right, you tell us about it?

A. I know, because of our address at that time, your Honor, 409 Court Street, and this program was adopted some time since I arrived in Saginaw in 1951; we adopted this program and moved out in August, 1952; so over a period of time I think this ad appeared; I don't know the exact date it appeared, 1951 or 1952,

and we adopted the program, and other open-end mortgages were the main stress, and ran four or five ads during that time.

The Court: When did you move from 409 Court Street?

A. In August, 1952.

The Court: Proceed.

Q. (By Mr. Van Zile, continuing): Now, in Exhibit 70-A, you are advertising, are you not, for FHA improvement loans?

A. Yes; we have two lines in that ad.

Q. I realize that, but just answer the question; is that correct?

A. Yes, sir.

(682) Q. And 70-B describes the open-end type of mortgage which you were seeking?

A. Yes, sir.

Q. Now, for what purposes did you loan your money on security of these conventional mortgages?

A. Would you please restate your question.

Q. For what purposes did you loan money on the security of these real estate mortgages we are talking about?

A. For the purpose of construction of new homes and the purchase of existing homes was the bulk of our use.

Q. Did you propose to loan money for purposes other than home financing, now construction, improvement of homes, and the like?

A. Not to my knowledge. Did we have any program, or such?

Q. Does this refresh your memory, what appears on Exhibit 70-B: "What is more, you can use the open-end plan for any purpose, a new car, maybe a new automatic

washer or a television set. Why not get all the details about the association's open-end mortgage plan."

Does that refresh your memory?

A. Yes.

Q. So that you did in fact make loans on the security of real estate for purposes other than home financing, construction and improvement, did you not?

A. Yes, we made a few.

(683) Q. You did?

A. I assume we did.

Q. In any event, you advertised for them, did you not, sir?

A. If you will identify the date of the ad for me.

Q. You have identified the date of the ad.

A. All right.

Q. Who in the Saginaw market—by market I mean the area in which you do business—are also engaged in the loaning of money on the security of real estate mortgages on residential properties in 1952? You understand we are speaking of '52?

A. First Savings and Loan, Second National Bank, Michigan National, Saginaw Savings and Loan. At that time I am sure that George O. Feters Company was a mortgage company, Equitable Life Insurance Company, and by the credit reports, numerous private individuals.

Q. Were they loaning money on similar types of property?

A. On existing structures, as I say, to some extent.

Q. Your answer is they were?

A. No, it isn't.

Q. What is your answer?

A. Well, I will give you a long involved answer then.

Q. All right, go ahead.



A. Equitable Life Insurance Company, and I think the banks and some private individuals were taking what I call the prime loans. I think we were taking loans at times—being by (684) nature a little higher risk institution, we are allowed by law to loan 75% of appraisal, and consequently we could help the person more to acquire a home than some other lenders could. So I think we were taking at times loans which other lenders could not take.

Q. Why?

A. Because the law permits us to loan 75% at that time, and, if I recall correctly, the banks were only permitted to loan two-thirds of the appraised value, and at that time I believe they were limited to ten years, and I think we took some loans probably that no one else would take. There was a very limited desire for those loans.

Q. Why was it you would not take FHA mortgages in that period?

A. I became manager completely as a stranger in '51, and there was some discussion of policy no doubt back in the mid 40's by our then board of directors.

Q. Are you telling me your policy changed after '52?

Mr. Dexter: I object to the answer, your Honor, unless it is for a special record.

The Court: I think he may answer it because of the particular situation here on the general record.

A. Starting in 1957, maybe late '56, because of, frankly, a great desire for housing in the colored area, our first FHA loans were made to a builder who wanted to see what he could build (685) for colored people. No FHA's had been made on that side of town to my knowledge, and it was a low housing, and we wanted to go along to see if this purpose could be filled.

. . . . .

Q. (By Mr. Van Zile): Does your association regard the FHA mortgage as more or less desirable than the conventional mortgage?

(686) A. In 1952 they regarded the conventional loan as more desirable.

Q. And why?

A. Because at that time mainly of the quick service that you could provide for your customers.

Q. Did it have anything to do with the rate of interest?

A. This is only an opinion, but I think at that time, if I remember what the FHA rate was—I don't remember the '52—the rate was four and a quarter, four and a half, and we were making a vast majority of our loans at five. We wanted to be of service, and we could offer quick service; at that time, as I recall, it was 30 to 40 days to get an FHA loan, and we were closing loans, if needed to be, people wanted to know what time to close, we were closing loans in three days.

Q. Did you not say that your institution accepted loans with greater risks?

A. We are talking about in the conventional market now.

. . . . .

Q. Did the fact that the FHA mortgage term was 20 years have any bearing on your decision in '52 not to take FHA mortgages?

A. I don't recall it ever being discussed. We were making loans on a thirteen year basis at the time, giving good service, and (687) I think that is the basic reason.

Q. Did the fact that FHA mortgages were insured and conventional mortgages were not have anything to do with your decision to take conventional mortgages in 1952 rather than FHA mortgages?

A. We were taking guaranteed GI loans at that time, which had some government aspects to them, so I don't think our decision hinged upon the fact of taking or not taking an insured loan.

Q. It was just, as I understand you, a matter of paper work; is that right?

A. A matter of being of service to the members of our association.

Q. Are you of more or less service to your community if you give a FHA loan than if you give a conventional mortgage?

A. I can give you a ten minute answer on it.

Q. If you can shorten it down, I will appreciate it.

A. In my opinion we can have just as much service or more on a conventional loan. Through our construction loan program at that time we were financing loans then for private individuals on a lot of \$500; and in one case I remember the fellow only owned a lot, but we knew because of his reputation he had the ability to build a house, and consequently his equity as it built up became the additional security. We can never do that under FHA, where a fellow who is a mechanic in our factory can go out under FHA and build a house. When the building program was completed, he was better off than going out and (688) getting a FHA loan. And we have numerous fellows we financed who built a house, had their labor equity and retained the profit and next year built another one. We have seen fellows come out with nice homes, where if it wasn't for the Savings and Loan, they would never get into that. The FHA wouldn't touch them, as I say, with a ten foot pole.

That was what we were referring to as our personalized service, trying to do the same thing with a low

down payment in a sense as FHA was doing on their program.

Q. But you did earn five to six percent as against four and a quarter percent; is that right?

A. Yes, sir.

Q. But that had no bearing on your decision?

A. I would think it wouldn't when we were taking four percent GI's at the time. It is a question of service.

Q. But most of your loans were conventional, were they not?

A. Yes, sir. But if our board was so cold-blooded that they wanted to get the last penny of interest, they wouldn't have made any GI's at four percent interest.

Q. Was there an equal amount of paper work involved in the VA loans?

A. It wasn't our feeling along about that time because—I don't remember when it changed—but at one time the VA appraiser was a local man in town whom you picked up in your (689) car and took out and appraised that house and got an answer then. You didn't have to wait for a long report from Flint. When that policy changed—it is not that present time, your Honor.

Q. Now, when you loaned money on a security of real estate, what was your procedure?

A. We received the application, the appraisal committee made the appraisal, board of directors passed on the loan, abstract was brought in either up to date or we had it brought up to date by the abstract company. Our attorney checked the title, gave us his opinion, we called the people and closed the loan.

Q. So that you were concerned with the value of the property and the personal ability of the borrower to meet the payments involved in the mortgage; is that right?

A. Yes, sir.

Q. And you considered the credit situation of the borrower?

A. Yes, sir.

Q. And not just the security involved in the property; is that right?

A. Yes, sir.

Q. Now, when a borrower walked in your front door, did he have to be an investor in your institution?

A. No, sir.

Q. In order to get in?

(690) A. No, sir.

Q. Do you use an application form for borrowing?

A. Yes, sir.

Q. Before you produce it, would you tell me whether it differs substantially from application forms used by other savings and loan associations?

A. I never did write and ask others to send me their copies so that I could compare them.

(An application form was marked Plaintiff's Exhibit No. 71 by the reporter.)

Q. I show you Plaintiff's Exhibit 71 and ask you to identify it.

A. That is the loan application for the Saginaw Savings & Loan Association.

Mr. Van Zile: I will offer it.

Mr. Dexter: No objection, except a continuing one. We believe it is cumulative evidence.

The Court: Received.

Q. (By Mr. Van Zile): I take it that loans are no longer bid off by your association?

A. That is right.

Q. You understand what I mean?

A. Well, I hope we are on the same psychic wave length. You mean about the days of gathering the people together, offering them to the higher bidder? Is that what you mean?

(691) Q. That is what I mean.

A. Then my answer was right.

Q. What were your total assets in 1946?

A. I don't think I had instructions to bring the '46. I thought we started with 1947.

(692) Q. I will show you, then, Exhibit 25, which is a report for '47, and ask you to tell me what the total assets were in that year?

A. In 1947, June 30?

Q. Yes.

A. Excuse me. I thought you wanted '46.

On June 30, 1947, our assets were \$3,254,380.63.

Q. And by June 30 of '52, what were your assets?

A. Our assets on June 30, 1952 were \$6,504,798.65.

Q. And as a part of the special record, your Honor, if I may, will you tell us what your assets were as of June 30, 1957?

A. Our assets on June 30, 1957, were \$17,810,727.20.

Q. Are there any restrictions on the amount of money which you loan on the security of real estate?

A. If you are referring to the state law to appraisals, 75 per cent of appraisal.

Q. No. I am asking you what your practice was, Mr. Pheiffer?

The Court: You mean on any one loan?

A. You mean one loan, one individual loan?

Q. (By Mr. Van Zile): As a whole. I mean taking all loans into consideration for the year 1952, did you have a limitation on the amount, total amount of money, which you would loan on the security of real estate?

A. Why, certainly.

Q. What was that?

A. Well, that is a policy that the Board of Directors have to (693) discuss from time to time as to

the amount of cash on Government bonds we keep on hand, what percentage of our portfolio will we allow.

Q. I mean per mortgage. That is what I am talking about.

A. Per individual mortgage?

Q. Yes.

A. During 1952—there is an understanding between the Board of Directors and the people on the staff that we have never been interested in thirty or forty-thousand dollar mortgages on the real higher-priced home.

Q. What is the largest amount that you loaned in 1952, if you can recall?

A. The largest individual loan?

Q. Yes.

A. I can't recall the largest individual loan. I know our average loan was about \$6,000. I would come nearer being right on that, after the passing of five years, than I would be to fish out and try to tell you what is the highest individual loan we made.

Q. Did you ever turn down a loan because it involved too much?

A. Yes. I don't know if it is in '52, though, frankly, but I know since I have been in Saginaw there has been one or two cases. We are just not interested in a very large loan.

Q. One or two cases?

A. And the one or two specific cases help to determine policy. (694) Part of our policy I think is determined from time to time by the individual situations which come up, and after the policy is set, from then on the staff knows the loans in which we are interested.

Q. Do you loan on combined residential-business property?

A. At the present time, out of about 2,800 loans, we might have five or six that is classified in that.



Q. What was the situation in '52?

A. Well, I think we would even have less in '52.

Q. Do you know?

A. It wouldn't be right to say I knew. I don't know every loan by heart.

Q. I am just asking to the best of your recollection.

A. Well, to the best of my knowledge, I would feel I would be absolutely on the safe side in saying—let me stretch it— not more than ten loans. I am just trying to think of a doctor downstairs and an apartment upstairs. It would be in residential areas.

Q. Did you make loans on commercial property?

A. In the past seven years—

Mr. Dexter (interposing): Mr. Van Zile, I assume the question is related to 1952?

Mr. Van Zile: Well, I so prefaced my remarks, Mr. Dexter.

A. I don't recall '52. I know from the time I arrived until about (695) '53, we made two loans that have been in that class. I don't know if they fell in the year '52. One was two or three thousand dollars to a fellow, and another one was slightly larger; but out of some—what—during that period of time, from six to eight hundred loans, there was one or two or three in the period.

The Court: And what was this five or six or possibly ten that we had in the preceding questions?

Mr. Van Zile: That was a combination residence and business.

A. If you call a doctor a business, or if you call an attorney a business.

Q. (By Mr. Van Zile): I don't think any of us would call that.

A. I know about the other classifications, where we have a lot of applications, where there is a house and a grocery store, which we didn't take.

Ours would be more houses than professional men. That would be a better term.

The Court: The first question was a combination; the second question was purely commercial?

Mr. Van Zile: That is right.

The Court: Very well.

Q. (By Mr. Van Zile): Now, you have said that you were permitted to loan up to 75 per cent, I believe, of the appraised value of property. Is that right?

(696) A. Yes, sir.

Q. And what was your policy in 1952, if you had one?

A. Our general policy among the staff on new construction was 70 per cent. Now, if a special situation came along because of credit, job, we could go to 75, and did a few times.

Q. That is on new construction?

A. Yes, sir.

Q. Did you have a different policy on old, already established homes?

A. Not too much. Possibly on houses thirty or forty years old, then two-thirds in that case; but houses that have been built since 1920, two-thirds to 70 per cent, and occasionally a good job, good credit, 75 per cent in that case.

Q. Did you feel that you were following a conservative policy to protect your investors in doing this sort of thing? By, that, I mean appraising it at the amounts which you have so stated.

A. Yes, sir.

Q. You felt that was conservative?

A. And it has proved up to this time they were very good loans.

Q. Did you make construction loans to builders?

A. Individual builders.

Q. Well, what other kinds of builders are there?

A. There is in this area and in Detroit the builder where you make fifty loans on a blanket mortgage, isn't there?

Q. Well, I don't know. I am just trying to find out.  
(697) The Court: I take it you don't make those; that is the important thing.

A. No, we don't make those. Each construction loan we make is an individual loan.

. . . . .

Q. (By Mr. Van Zile): By individual builders, do you mean corporate builders or persons that build individually or—

A. (Interposing): Our building economy in our city is, to a large extent, the individual operator who employs two or three people to work with him and has a truck and is practically to the point of working out of his house, and he builds five to twelve houses a year, one at a time.

Q. That is the way the builders are in Saginaw, I take it?

A. In 1952, that was the general pattern of building.

Q. So that you didn't have this large type of builder whom you have been talking about in the Detroit area?

A. No.

Q. You recorded all of your mortgages?

A. I hope we did.

The Court: Well, Mr. Van Zile, while I ruled, I would appreciate having that question asked in all cases. I would rather assume that that would be the case, in making the ruling I did.

(698) Q. (By Mr. Van Zile): You made it a habit, Mr. Pfeiffer, to record all of your mortgages?

A. Yes, sir.

Q. And promptly?

A. Yes, sir.

Q. What taxes did you pay to the State of Michigan or other political subdivisions of the state in 1952?

A. Well, let's make with the state reports that you have which I looked at, that you put in as an exhibit. I think that shows it. (Documents were handed to the witness.)

Now, is this in our fiscal year ending in 1952?

Q. No. This is the end of the year, and would you describe the character of the tax, too, as you go along?

If you would like, I can ask you various taxes and you can answer.

A. Well, the problem we are going to run into on this report dated '52—all right. Let's talk about the intangibles, and ask me on that.

Q. All right. What intangibles tax did you pay, if you recall, in 1952? What was the rate of the tax, do you remember that?

Mr. Dexter: Your Honor, I think that is a matter of law.

A. I think I know what it is, but it is only an assumption. I think it is—what is it—four mills, the same as it is today. I don't know, though.

(699) Q. (By Mr. Van Zile): Was it 40 cents per thousand on the paid-in value of your shares? Does that strike a note?

The Court: As for intangibles, can't we assume that these people paid the intangibles tax required by law?

A. We paid it. I know it was our policy.

Q. (By Mr. Van Zile): Did you pay a privilege fee to the State of Michigan to the Secretary of State?

A. Yes.

Q. And was that at a rate of a quarter of a mill on your capital and legal reserve?

A. I don't have any idea. We have a treasurer who has been there thirty years and does this automatically every year. He knows the law backwards and forwards, and fills out his report.

Q. Did you pay a real property tax on your land and building?

A. Yes, sir.

Q. And was that levied on your assessed valuation at the same rate as other real estate located in Saginaw County.

Mr. Dexter: Your Honor, I think that on those questions, that it can be presumed that it was. I don't think that any of these witnesses can testify as to what—

A. (Interposing): We paid real property, and I am not going to say—in Saginaw we have just been having the biggest rhubarb in our town that we have had in years, whether it is a fair rate.

Q. (By Mr. Van Zile): You paid a real estate tax; you don't (700) remember what it is?

A. Yes, sir.

. . . . .

Q. (By Mr. Van Zile): Did you pay a personal property tax, Mr. Pheiffer?

A. Yes, sir.

. . . . .

(701) Q. (By Mr. Van Zile, continuing): You have your personal property tax?

A. Yes, sir. (Producing two documents.)

Q. And would you decipher this for me; tell me how much the tax was, and what the rate was, if you can?

A. This is the December 1, 1952 county tax (indicating) on personal property, \$2,500, the rate was

\$15.01, the one per cent collection fee—excuse me, the rate isn't \$15.01. Total taxes \$15.16, that is the county.

Q. And what was the tax in December or July?

A. This is the July city personal property tax. We were assessed at .42500. The total tax was \$69.09.

Q. Those were the only personal property taxes you paid during 1952, is that correct?

A. That is right.

Q. And what was your dividend rate in 1952, if you recall it?

A. Two and one-half per cent.

Q. And, subject to this special record, what is your dividend rate now?

A. Three and one-half.

Q. And to recapitulate; my understanding is that you made conventional mortgages, the length of which were fourteen or fifteen years on an average; is that what you said?

A. We never settled the average question.

(702) Q. I see.

A. I never made a statement on the average. I said it was some place in the neighborhood of fourteen years, one year either way. It is absolutely not seven or eight. So, if there is any—

Q. (Interposing): It could be ten?

A. It is not ten, I am positive of that.

Q. I mean it could be ten on the other end of the line?

A. For the average?

Q. No, not for an average; we are talking about maximum and minimum now; is that correct, it could be ten?

A. It could be ten on the other end what?

Q. What is the minimum?

A. The minimum loan?

Q. The minimum term.

A. The minimum term.

Q. Yes.

A. We have had people come in and tell us they want to build a new house, and we might have a loan written for one year, but it is rare.

Q. So your loans would range from one year to fifteen, is that what you were saying?

A. Yes. I want the record to show the number of one-year loans is way less than one per cent of the total. I do not (703) want to leave any impression in the record that we are holding our loans to one year.

Q. And the term of the FHA loan was twenty years?

A. Of the FHA loan?

Q. Yes; was that a twenty-year loan, FHA? What was the term?

A. We didn't make FHA loans.

Q. I know; I am asking you.

A. I don't know.

Q. You don't know; you have never made an FHA?

A. Not in 1952.

Q. In any year?

A. The 1956, 1957 or 1958, I know the terms right now, and I know what we have made. Do you want that?

Q. But you don't know what the term of an FHA loan was in 1952?

A. You were telling me twenty years; I frankly do not remember it was that; maybe it was; I don't know.

Q. What, to the best of your recollection, was the term of an FHA loan in 1952?

A. I am under the assumption there were special sections some place back even as early at 1952 in FHA; you might have got a twenty-five year loan; I don't know.



Q. The average rate of interest you charged was five to six per cent on your conventional mortgages, is that right?

A. Yes, sir.

Q. And do you recall what the rate of interest was on the (704) mortgages?

A. The net to the lender, after taking off the FHA, was in the range of four and a quarter to four and a half.

. . . . .

Q. (By Mr. Van Zile, continuing): Could you tell us what the rate of appraisal was on the FHA type loan in 1952, if you recall it?

A. No, sir.

. . . . .

(705)

*Cross Examination*

By Mr. Dexter:

Q. May your shares be assigned?

A. Yes, sir.

Q. And can they be assigned without the consent of the Association?

A. I have never known it being done in practice; I honestly don't know what you will find. The rare times they are assigned, they seek our permission and want it, so we will be on notice.

Q. The shares may be redeemed or repurchased by the Association?

A. Yes, sir.

Q. And that is done at the face value, plus declared dividends?

A. Yes, sir.

Q. Do you reserve the power to refuse anyone to become a shareholder? If you do, would that be provided for in your by-laws?

A. In the by-laws.

Q. In carrying out your functions as an association, do you carry out the purposes expressed in your by-laws and in the statutes made and provided that create you?

A. Yes, sir.

(706) Q. What are your sources of capital, your shareholders' funds?

A. Our shareholders' funds, as a source of the word "capital," yes, sir.

Q. And do you have a source of borrowed money?

A. Yes, sir.

Q. Did you have any borrowed money in 1952?

A. Yes, sir.

Q. Where?

A. From the Federal Home Loan Bank of Indianapolis.

Q. You do not maintain checking accounts with your customers?

A. No, sir.

Q. Where do you keep the cash required for your business?

A. Our cash is kept in the commercial banks in Saginaw.

Q. Why don't you keep the cash in another savings and loan association?

A. That is not the purpose; we want it in the bank; we even have most of it in the bank within a block and a half of our office for quick availability and convenience.

Q. Because you are maintaining a commercial checking account there—

A. (Interposing): Yes, sir.

Q. And do you pay out all your money, including your borrowers' money by drawing on the commercial checking account?

A. Yes, sir.

Q. To pay the expenses of your business?

(707) A. Yes, sir.

Q. Do you have any idea what balances you maintained in the banks during the year 1952?

A. On December 31, 1952, we had \$458,000.

Q. In commercial banks?

A. In the commercial bank, yes sir.

Q. In the locality that you do business?

A. Yes, sir.

Q. And what banks would that include?

A. Second National Bank and Trust Company, at that time, for our main commercial account; a small account with Michigan National Bank, used for our dividend full-paid payments, for the payment of dividends on our full-paid shares.

Q. How are the loans that you make amortized?

A. Equal payments over a period of fifteen years, or less.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

Q. Do you make unsecured loans on the strength of a borrower's financial statement?

A. Insured FHA Title 1 loans, which has never been more than \$60,000 since we have been in the program.

Q. But outside of that, all your loans are secured by real estate mortgages? Are all of your loans secured by real estate?

A. All mortgage loans are secured by real estate, yes, sir.

Q. What provision is made in your mortgages concerning (708) prepayment?

A. In 1952 you could pay all you wanted to on your mortgage without penalty.

Q. Do you sell or assign any of your mortgages?

A. No; we have never sold or assigned any of our mortgages.

Q. As I understand, once the mortgage and the mortgage note are signed, funds are made available to the borrower by drawing on a commercial account in a bank?

A. Yes, sir, but I just want to make one exception; if it was a construction loan we would later pay it out as it progressed; by the same type of check. We hold the funds—

Q. (Interposing): And at that time would you record a mortgage?

A. We record the mortgage the minute we close it.

Q. And there wouldn't be any money expended at that time?

A. Except just for closing expenses.

Q. Would there be occasions where the money would never be lent because of changing conditions since the time of closing and the actual lending of the money?

A. I never knew of a case. We close a loan and hold the money and never pay it out?

Q. I was thinking possibly you determined to make the loan, you closed it, it is a construction loan of some kind, then the person does not go through with it, for some reason, the construction does not progress, whether it is a builder or individual, and the money is just never lent?

(709) A. Only one situation like that in the history of the association I know of, where the people got into an argument and it eventually ended up under whatever the seven-year law is, going into the state where they couldn't agree who is going to get the money. That is the only case I heard of, and that was on the books when I came to Saginaw. All the other loans have been completed and the money paid out.

Q. There is no relationship in time when the mortgage is recorded and the money actually expended; that is, there may be a lapse of quite a period of time?

A. The longest I know of has been around thirteen months, fifteen months, where a fellow built his own house and just took his time in doing it.

Q. Stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year, in the Saginaw area?

A. There were a great many mortgages in 1952 available. If anything, the demand was greater than the supply of money.

In our own case, we used borrowed money in that period of time from the Federal Home Loan Bank.

Q. Did you borrow as much from the Federal Home Loan Bank as you believed was prudent in order to meet this mortgage money demand?

A. Yes, sir; if we didn't borrow—if we didn't borrow, we had borrowed just in the previous year, and kept on using (710) this, because of the availability of mortgages in the year 1952.

Q. As I understand it, the demand for mortgage money in Saginaw, for the kind of loans you make, that is, homes, exceeded that which could be supplied by your association and other mortgage lenders in the area that lent money on that type of security? In other

words, there was an excess of demand for mortgage money?

A. Yes, we had more loans available to us on our policy than we could actually handle, and had to borrow money.

Q. Was that true of people lending money in that area at that time?

Mr. Van Zile: If he knows.

Q. (By Mr. Dexter, continuing): On what kind of property?

A. (Interposing): The next witness, I don't know whether he had borrowed money at the time, I think he did, but, gee, I don't know; I am sure that was—I felt the market—that was the situation, that is the reason I came to Saginaw, frankly, because of the underdeveloped availability of home financing; that was the situation in the late forties and early fifties.

Q. And that was serving the purpose of your association to do that?

A. Yes, sir.

Q. Are you a member of the Home Loan Bank of Indianapolis?

(711) A. Yes, sir.

Q. You are insured by the Federal Savings and Loan Corporation, that is, your shareholders?

A. Yes, sir.

Q. Up to \$10,000. How many employees do you have?

A. In 1952?

Q. Yes; just generally.

A. It ranged from seven to nine.

Q. I presume you had just one location in Saginaw?

A. Yes, sir.

Q. Now, as I understand it, a borrower becomes a member when he borrows, right?

A. Yes, sir.

Q. And he is entitled to vote?

A. Yes, sir.

Q. An investor becomes a member when he invests money?

A. Yes, sir.

Q. Simultaneously. Why is it that a borrower becomes a voting member of your association, as well as an investor?

A. I see; that is sort of a middleman in the Board of Directors—we are making home ownership available to those people who want to acquire homes, and we are bringing together people who have money to invest, want to buy shares, and it is just as important that the borrower knows there is money in the community, that he is responsible to his neighbors for this (712) money, that he repays it, and that he is using it.

Q. In other words, isn't it a fact that the members are—or, your association is a mutual association, between people who are borrowing money for home mortgage purposes, and people who are investing money for that purpose?

Mr. Van Zile: I will object to that unless we have a definition of what Mr. Dexter means by the term "mutuality."

Q. (By Mr. Dexter, continuing): By that I mean that both people are members in an association, mutually each having a right to vote?

A. Yes sir.

(714) Q. In other words, let me ask you this.



A. Our point is a mutual institution, and the reason we are so successful today is because of borrowers and savers working together, and because during the depression a lot of people knew that the board of directors had made it possible for them to keep their homes, and we get a lot of business at this very hour because people remember the treatment.

Q: Let me ask you this. If you attempted to get the maximum interest possible would that be an endeavor that would be counter to your borrower members' interest?

A. We could charge—

. . . . .

A. Yes, sir. If we are trying—if I follow the question right myself—if we are trying to hit the borrower for the highest possible interest we could get, then we are not serving our purpose in the Saginaw community.

Q. You wouldn't be serving your borrower members at all, would you?

A. Neither would we be serving the savers, because in the long run our own public relations, our reputation as a place where a little man can get a home is soon shot, and the word gets on the street.

. . . . .

(715) Q. (By Mr. Dexter): Let me ask you this, then. Did you have a policy of helping the individuals acquire a home for his own occupancy during '52?

. . . . .

A. Yes, we did. I think we did. For the number of loans we made, I feel we financed as high a percentage of our loans. If we made a hundred loans, and would it be fifteen or twenty or twelve, we had a higher percentage than anyone in the city on financing the owner built construction, and I still think that goes back to

one of the basic parts of our business, and it was our policy to do that, and it is today, and I know to the outsider and the person in Detroit, they look at us (716) like we are out of our mind, and yet we never had one loss or got into one mechanic's lien. We financed a fellow with a lot and his sweat equity, and those people today talk about boosters for our business and how it has helped build his house because we gave him an opportunity, where there is only one other place in town that they could get it.

Q. Just one more question, and I think we will be through here. Most of your loans would be around the period of 15 years; that is the bulk of your loans?

A. I go back to the same answer I gave some place. Thirteen to fifteen.

Q. You didn't make very many one year loans or short-term loans?

A. No, sir.

(717)

*Re-direct Examination*

By Mr. Van Zile:

Q. First of all, I would like to talk about construction loans. Is it not true that in the case of so-called construction loans that those loans were committed for at the time they were made whether the money was paid out or not?

A. Committed for what? Committed for us as borrowers?

Q. Yes.

A. Oh, yes, the record shows as soon as the loan was made we set aside and show each month how much we committed.

Q. It would appear on your balance sheet?

A. Yes.

Q. And it is set aside as a liability, so to speak, is it not?

A. Yes, sir.

Q. So that whether or not it was actually paid out immediately, it was committed for and carried as a liability; is that not right?

A. Yes, loans and profits.

Q. How long did it take to pay out those construction loans on the average from the time that they were committed for?

A. Oh, I would say the average, about four to four and a half months.

Q. What percentage of your loans were construction loans?

A. You would have to add it up here. The report shows. I didn't (718) know you were going to ask the question. We can add it up here.

Q. Can you give me a rough approximation?

Mr. Dexter: Would that show the total construction loans on a cumulative basis?

A. It shows each month we made a hundred some loans during 1952. There are around 112, 115 construction loans, and it may well be, if I recall correctly, the annual report might show it, but we would have to look at both of them. We don't know which six months in '52 and which in '53.

Q. Were these so-called construction loans made to builders?

A. Part of them. I described earlier how we financed the one man builder in our city. I should say the one crew is a better word.

Q. Can you tell from the annual reports of the Secretary of State, referring to the report of your association—it is Exhibit 29—how much you borrowed.

from the Federal Home Loan Bank Board as of that date?

A. On June 30, 1951, we had \$400,328.68.

Q. I show you Exhibit 30, which is the report for 1952, and ask if you could tell me how much you had borrowed from Federal Home Loan Bank Board at that time?

A. On June 30, 1952, we had \$200,205.50 borrowed.

Q. So it is down, is it not, from 1951?

A. Yes, sir.

(719) Q. I will show you Exhibit 31, which is the report for 1953, and ask you if you can tell from that report what the amount was you had borrowed.

A. June 30, 1953, we had no funds borrowed from the Federal Home Loan Bank.

Q. So that by 1953 it was a long way down. That includes part of '52, does it not?

A. Yes, sir.

Q. That is the fiscal year ending June 30, 1953, right?

A. Yes, sir.

Q. I will show you Exhibit 32, which is the report ending June 30, 1954, and ask you what that report shows as to the amount you had borrowed.

. . . . .  
(720) A. For June 30, 1954, we had no funds borrowed from the Federal Home Loan Bank.

. . . . .  
Q. (By Mr. Van Zile): And I will show you Exhibit 33, which is a report for 1955, and ask you if you can tell me how much you borrowed from the Federal Home Loan Bank at that time?  
. . . . .

(721) A. June 30, 1955, we had no borrowed money from the Federal Home Loan Bank.

Q. (By Mr. Van Zile): What was the state of the market for mortgages in terms of money available and mortgages needed?

A. I think that the answer is on the other side of the coin. Being I am out of town and the Board of Directors aren't hearing me, Pheiffer and his crew had a chance to go out, and the Saginaw Savings & Loan Association became better known, and our savings moved up in proportion to the need.

. . . . .

(723) Q. Mr. Pheiffer, immediately before the recess we were talking about your borrowing from the Federal Home Loan Bank Board, as shown in the various building and loan reports, Exhibits 25 through 35, I believe.

Are those borrowings from the Federal Home Loan Bank an index of the tightness of money in the mortgage market? I mean the availability of mortgage money?

A. If there hadn't been a demand for the use of the money to make mortgages, we certainly wouldn't have borrowed it and paid the interest. We had an outlet for it.

Q. Am I correct then in saying when your reports show that you were borrowing money from the Home Loan Bank in (724) substantial quantities, it indicated that there was a shortness of money in your community for loaning on mortgages? Is that a correct conclusion?

A. No, not in my opinion, because that would mean then that we had no money problem in the Federal Home Loan; there would be no need for borrowing money, or any shortness. That is not the only indication. You cannot say flat that borrowings from the

Federal Home Loan Bank is an index of the demand for money in the community.

Q. Is it one?

A. It is one, yes, sir.

Q. Is it an important index?

A. Not necessarily.

Q. Is that one of your primary reasons for borrowing from the Home Loan Bank, so as to gain an added supply of money to loan on mortgages?

A. Yes, sir.

Q. Now, during these periods when the money was tight, so to speak, there wasn't as much available as in other periods for loaning on mortgages; was it your policy to be more selective in the mortgages that you made loans on, and the security?

A. We had certain funds available to be loaned.

Q. Yes, I realize that.

A. And we would take as many applications as we could which (725) qualified for mortgages with the Saginaw Savings & Loan.

Q. Well, did you up your qualifications for mortgages during those periods; did you try to make a safer loan, that is what I am saying?

A. I think all of our loans were safe; I mean that—

Q. (Interposing): Now, you testified, I believe, that you made some loans that the FHA wouldn't handle?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And was that because the prospective borrower was a poor credit risk?

A. No, sir.

Q. Well, what was the reason, if you can tell us?



A. Because of the procedure under FHA, only—an FHA loan to my knowledge couldn't be made to an individual to build his own house, do his own sub-contracting, and do all the work, or whatever percentage he wanted to do; the FHA wouldn't accept such applications, or neither would the VA by 1952.

Q. And how many of such loans did you make, have you any idea, in 1952?

A. Oh, I would say we loaned some place in the neighborhood of two hundred and fifty to four hundred thousand dollars during the year on this particular kind of application.

(726) Q. And I take it that your records would be available to show that sort of thing?

A. If we were still—our memory was such that we could go over each one of them and remember about the loan at the time. A loan to an individual to finance his own house looks just like the loan from the number and amount as any other.

Q. How do you know the loan was going to be of that sort?

A. When they come in to make the application for this loan?

Q. Would it show on the application?

A. On some of the applications it would. Others, at the time, brought in plans and specifications; and a break-down of the actual cost, cash outlay to build this house, how much it would cost under this procedure; and once the house is completed and meets our final inspection, then we give back the set of house plans and the specifications and the cash break-downs. So we might have in our files some, and some since 1952 we wouldn't.



(727) Q. Well, then, you haven't the records to show that, is that what you are saying, now? You haven't the records to show that now in your possession?

A. We have records—we have some of those records, and we have some due borrowers' accounts, no doubt, where it shows how the money was paid out, and if I inspected those, I would know from the way it was paid out whether it was some individual. If there is some 50 to 75 checks written for the material—we do not give the individual the cash; we pay the bills for him. While Joe Doakes, A-Number 1 contractor, we will make three payouts on the loan and give him the check.

Q. Now, your investors are interested in the rate of return that you pay on their shares, are they not?

A. Yes, sir, a certain section of them—a certain segment of them are.

Q. Will you please answer it yes or no?

A. I can't answer it yes or no.

Q. Then say you can't.

A. All right.

Q. And your dividend rate has been increasing, has it not?

A. Yes, sir.

Q. It has gone from something like 2 to 3 per cent, isn't that right, or is it  $3\frac{1}{2}$ ?

A. It has gone in my time from  $2\frac{1}{2}$  to  $3\frac{1}{2}$ .

Q. And when the investor puts his money in a share account, (728) doesn't that interest rate which you are paying, isn't that the real reason why he invests in your funds?

A. No, sir. Surveys by J. Walter Thompson—

Q. (Interposing): No, no. I don't want—

Mr. Dexter (interposing): He asked a question, your Honor.

Q. (By Mr. Van Zile): Mr. Dexter can bring that out. If you can't answer the question, say so.

A. All right. I am not going to give you a flat 100 per cent yes answer.

Q. All right, then, don't.

A. O.K.

Q. I mean, that is all right.

Now, do you seek investments in your shares from corporations?

A. We have not circulated letters or made any special effort to send out mailings to corporations and trust funds or corporate funds or anything like that.

Q. Do you have corporate investors?

A. Oh, I'm sure we have. I can remember one.

Q. Do you have investments by trustees?

A. A few.

Q. Do you have—

A. (Interposing): Now, wait a minute. Let me back up.

In 1952, I think we had trustee funds at that time.

(729) Q. And do you have investments by pension funds?

A. Not to my knowledge.

Q. Or charitable organizations?

A. Define "charitable organization" for me, will you please?

Q. Churches, societies, and that sort of thing.

A. Service clubs?

Q. Yes, well, yes, that would be one.

A. Yes, we have a few accounts by charitable organizations.

Q. And it is your position, as I understand it, from your prior testimony, that those people are investing in your association as a community service, is that right?

. . . . .

A. Define "community service." Define "community service" for me.

Q. (By Mr. Van Zile): Did you previously testify that they were investing as a community service in your association, or did I misunderstand you?

. . . . .

(730) Q. (By Mr. Van Zile): Can you answer that question?

A. I don't think I used the term "community service." We are building in the community.

Q. Is your dividend rate dependent upon the amount of interest which you receive from your borrowers?

A: There certainly is a relationship.

Q. I mean the higher the interest rate that you charge your borrowers, the more dividends you could pay; isn't that so?

A. It is possible. It is up to the discretion of the Board of Directors.

(731) Q. And a five and a half or six per cent interest rate as against a four per cent interest rate will give you a greater return on your investment; isn't that so?

A. Yes, sir.

Q. And it will enable you to pay a higher interest rate; isn't that so?

A. Pay a higher interest rate?

Q. Dividend rate, I meant to say.

A. It would make it possible for us to do it, providing we maintain our liquidity position the same as in earlier years.

. . . . .

JEROME JAMES H. was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Van Zile:

Q. What is your occupation, Mr. Jerome?

A. I am the executive vice president of First Savings and Loan (732) Association of Saginaw, Michigan.

Mr. Van Zile: For the record, your Honor, I would like to state that we have previously taken the deposition of Mr. Jerome pursuant to the terms of your discovery order previously entered, that in accordance with that discovery order we have the right to offer in lieu of his oral testimony the testimony which we took by deposition.

To expedite the proceedings, I would like to offer in its entirety the deposition of Mr. James H. Jerome, taken by the plaintiff at the offices of First Savings and Loan Association in Saginaw, Michigan, on Friday, December 13, 1957, together with the exhibits which were identified at that time, with the exception of one exhibit, which is the annual report of the Secretary of State for the fiscal year ended June 30, 1952; which was marked Exhibit 4 on the taking of that deposition, and which has already been introduced as an exhibit in these proceedings and received in evidence.

I don't know what your custom is, but I would like to mark his deposition as an exhibit, together with the exhibits, renumbering them.

The Court: Is there any objection, Mr. Dexter?

Mr. Dexter: No objection to this, except as to our objections stated in the deposition.

(733) The Court: To specific questions?

Mr. Dexter: No.

The Court: There may be some objection to specific questions already stated in the record, but as far as the deposition itself—

Mr. Dexter: No objection except our continuing objection as to materiality.

The Court: Very well, it may be marked for purposes of identification.

(The deposition of James H. Jerome was marked Plaintiff's Exhibit No. 72 by the reporter.)

Mr. Van Zile: The deposition itself is Plaintiff's Exhibit 72.

Exhibit 1 for identification on the taking of that deposition is the by-laws of the First Savings and Loan Association, which we will remark as Exhibit 72-A.

(The By-laws of First Savings and Loan Association was marked Plaintiff's Exhibit 72-A by the reporter.)

Mr. Van Zile: And Plaintiff's Exhibit 2 on the taking of that deposition will be remarked as Plaintiff's Exhibit 72-B. That is the passbook or savings account book of the association.

(The passbook was marked Plaintiff's Exhibit 72-B by the reporter.)

Mr. Van Zile: And the exhibit marked Plaintiff's (734) Exhibit 3 for identification in the taking of that deposition will be remarked as Plaintiff's Exhibit 72-C; and it is the statement of condition as of 12-31-52.

(The Statement of Condition as of 12-31-52 was marked Plaintiff's Exhibit 72-C by the reporter.)

Mr. Van Zile: And Plaintiff's Exhibit 5 for identification on the taking of that deposition will be remarked as 72-D, and that is the application for loan form of the association.

(The Application for Loan Form was marked Plaintiff's Exhibit No. 72-D by the reporter.)

Mr. Van Zile: I take it the reading of the deposition, Mr. Dexter, is waived at this time?

Mr. Dexter: Fine.

(An Annual Report for the year ending June 30, 1953, was marked Plaintiff's Exhibit 37-M-1 by the reporter.)

Q. (By Mr. Van Zile): Mr. Jerome, I will show you two exhibits which have been marked 37-M and 37-M-1, the annual reports of your association for the years ending June 30, 1952, and June 30, 1953, and ask you if they truly and correctly represent the financial condition of your association as of the dates noted in the reports?

A. To the best of my knowledge and belief, yes, sir.

Q. And I believe you signed both reports, did you not?

(735) A. Yes, sir.

Q. Under oath and notarized?

A. Yes, sir.

Q. Those reports were required to be filed with the Secretary of State as a matter of law?

A. Yes, sir.

Q. Were these reports made by your association in the regular course of business, Mr. Jerome?

A. May I have a little clarification?

Q. Do you make these reports every year?

A. Yes, sir.

Q. So that they were made in the course of your business, and did they correctly reflect book entries in your association?

A. Best of my knowledge.

Q. I will show you what has been marked Exhibit 36-I, which is the monthly report of your association to the building and loan division of the Secretary of State's Office for December 31, 1952, covering that month and ask you if that truly and correctly repre-

sented the condition of your association as at December 31, 1952?

A. Best of my knowledge, it does.

Q. And it is sworn to by an officer of your association?

A. He was secretary at that time.

The Court: Is that different from 72-C, Mr. Van Zile?

(736) Mr. Van Zile: Yes, 72-C, sir, was a published report that they distributed to the shareholders, and this contains a little more information than your published statement.

Q. (By Mr. Van Zile): Mr. Jerome, in 1952 did your association pay a personal property tax?

A. Yes, sir.

Q. Do you have the receipts for that tax with you?

A. Yes, sir.

Q. And these two receipts, Mr. Jerome, do they show that in December, 1952 you paid a county tax bill of \$60.65 on your personal property and on July 1, 1952, a further personal property tax to the city school district of \$276.35?

A. That is correct.

Q. Now, there is just one thing that I did not cover with you at the time that we were in Saginaw, Mr. Jerome. We discussed in general the purpose of your mortgage loans. Did you loan money on the security of real estate, residential property in Saginaw in 1952, for such purposes as the payment of taxes, refinancing mortgages, refinancing land contracts, buying automobiles, improving; medical bills, personal use, and so forth?

A. Yes, sir, we did.

. . . . .



(737) Q. First of all, it is true, as I understand it, that you did make mortgage loans for those purposes in 1952?

A. We made mortgage loans often where a man will come in and state his purpose is for personal use. We do not inquire as to what that use is. It may be to buy an automobile, or to pay a doctor bill, or such things.

Q. And that did happen in 1952?

A. Yes, sir.

Q. And did you, Mr. Jerome, advertise that you would make such loans?

A. Well, I searched our files for 1952, and prior years' advertising, but it had been destroyed. I could not answer.

Q. Well, I don't know whether this will refresh your memory or not. I am showing you that (handing document to the witness). Is that the sort of ads that appeared in 1952?

A. Well, it is our advertisement; whether it was 1952 or not, I couldn't tell you.

Q. I mean you don't remember whether such an ad did appear in 1952?

(738) A. No, I wouldn't be able to answer that positively one way or the other.

. . . . .

The Court: May I inquire whether the books of this corporation were marked or referred to at the time the deposition was taken?

Mr. Van Zile: No, they were not.

Mr. Dexter: No, they were not. . . . .

(739) GATES, WENDELL C., was thereupon produced as a witness on behalf of the Plaintiff, and, after having been first duly sworn, testified as follows:

*Direct Examination*

By Mr. Klein:

Q. What is your position with the Peoples Savings & Loan Association of Battle Creek?

A. Executive vice-president.

Q. How long have you been executive vice-president of the Industrial Loan, Mr. Gates?

A. Since 1925.

The Court: Mr. Klein, I didn't get the full name of the corporation?

A. Peoples Savings & Loan of Battle Creek.

The Court: Peoples Savings & Loan Association?

A. That is right.

Q. (By Mr. Klein, continuing): Formerly your association was known as the Industrial Savings & Loan Association, was it not?

A. That is correct.

Q. And that was changed in what year to Peoples Savings & Loan Association?

A. 1955, I think; 1954 or 1955.

Q. And when was this association organized, Mr. Gates?

(740) A. January 12, 1925.

Q. And you were organized under the State Savings and Loan Association law?

A. That is correct.

Q. And your charter and by-laws are pretty much the same as most state savings and loan by-laws and charters? Do you know whether they are or not?

A. Well, I don't know about the others; it was more or less a standard.

Q. You think it was standard?

A. Yes.

Q. All right, sir. And, are you the chief executive officer, Mr. Gates?

A. I think so.

Q. And in that connection you have the chief executive responsibility of overseeing the negotiation of loans?

A. That I am sure of.

Q. And of attempting to get investment depositors—or, investment shares?

A. That is better, thank you.

Q. The answer is "Yes"?

A. That is correct.

Q. And do you have general supervision and control of the books and records of the Association?

A. Yes.

(741) Q. And you did have in 1952?

A. Yes.

Q. Mr. Gates, I will show you Exhibits which have been marked in this case—

(Annual Report year ended June 30, 1953, was marked for identification by the reporter as Exhibit 37-C-1.)

Q. (By Mr. Klein, continuing): —exhibits which have been marked 37-C and 37-C-1, and ask you if they are copies of the annual report of your association filed with the Secretary of State of Michigan under the name Industrial Savings & Loan Association, for the fiscal years ended June 30, 1952, and June 30, 1953, respectively?

A. I think that is correct.

Q. And I will show you an exhibit which has been marked Exhibit 36-A, and ask you if it is the monthly

report of your association filed with the Department of State of the State of Michigan for the month ended December 31, 1952?

A. To the best of my knowledge and belief, that is correct; that is our secretary who signed it.

Q. That is her signature?

A. Yes.

Q. And you know that signature?

A. Correct.

Q. And were those reports, Exhibits 37-C, 37-C-1, and 36-A, prepared in the regular course of business of your Association, (742) and pursuant to such regular course of business filed with the Secretary of State of Michigan?

A. They were.

Q. And do they truly and correctly reflect the entries which appear on the books and records of your corporation?

A. I believe they do.

Q. In fact, there is an oath on 37-C and 37-C-1 that they truly and correctly reflect—

A. (Interposing): That is correct.

Q. And did Mr. Walter North sign one as president, and I don't know who signed this other one, but whatever the signature is; is that (indicating) Mr. North's signature?

A. No, that was William Heffley; he was the preceding president.

Q. I see. And, in that connection, Mr. Gates, would your Association be willing to have Mr. Dexter, or someone from his office, inspect the books and records of your association to determine the correctness of these statements as filed with the Secretary of State?

A. Of course, that is a Board prerogative; if it is within legal bounds, it certainly would be all right.

Q. You know of no objection at the present time?

A. I know of none.

Q. Now, do you know what the capital of your Association was when it was organized, sir?

A. I will have to get my books.

(743) Q. Yes, sir.

A. (Producing documents.) On the original articles of association the authorized capital stock was \$2,000,000.

Q. What was paid in when you incorporated?

A. That I cannot tell you from this, but my recollection is that there was about fifty or sixty thousand dollars.

Q. And you started business on fifty or sixty thousand dollars, and according to your report, 36-A, on December 31, 1952, you had a total amount shown in investors' shares of over \$5,900,000, is that correct, sir?

A. That is what it says, yes.

Q. And you had total assets in excess of \$7,400,000?

A. Yes.

Q. That is on December 31, 1952.

Now, during the year 1952, and prior, did your organization endeavor to obtain as many shareholder investors as you could?

A. Well, we were advertising for thrift accounts, and were willing to take them.

Q. How often did you advertise, sir?

A. Well, that I cannot tell you now.

Q. Approximately?

A. Well, our normal contracts would run, with the press, that is, would run a couple insertions a month; sometimes oftener.

(744) Q. Were you on the radio?

A. Yes.

Q. How frequently, sir?

A. Well, we were on the radio daily for spots.

Q. Now, I am particularly talking about 1952.

A. I am not sure we were on that frequently in 1952.

Q. Yes. Did you use direct mail advertising?

A. With our statements only.

Q. And did you endeavor to obtain as many saving shareholder investment accounts as you could?

A. Yes; we had an opportunity to use the money, and we were inviting it.

Q. And did you agree with any shareholder to pay him any fixed amount of interest?

A. No, we didn't agree, any interest or any fixed amount either.

Q. In fact, you are prohibited by law from paying interest?

A. That is correct, yes.

Q. Did you pay dividends in 1952?

A. Yes, we did.

Q. And you paid dividends semi-annually, did you not?

A. Correct.

(745) Q. And dividends are dependent upon the earnings of your corporation, are they not?

A. That is correct.

Q. The more earnings you have in the operation of your business, the more dividends would be available to investors, wouldn't they?

A. Well, not necessarily. It could follow.

Q. You could only pay dividends if you were making earnings?

A. That's correct.

Q. And did your corporation hold back earnings besides the legal reserve?

A. Yes.

Q. To what degree?

A. Well, we held reserves, which is the prerogative of the Board, primarily to create proper reserves for doing business, considering the amount of business we are doing, new business and risk.

Q. But aside from that, your dividends would depend upon the earnings; you would keep building up reserves plus paying dividends?

A. But that factor is a very important one, the matter of creating reserves to cover new risks.

Q. Right. It was an added cushion for your shareholders, was it not?

A. It was a reserve to protect the new risks involved in business.

(746) Q. That if you lost on a mortgage, why, the impact of the loss wouldn't fall too hard upon the people who owned the corporation?

A. That's right.

Q. Now, did a person have to be a member before he became an investor with your corporation?

A. Yes.

Q. Or did he become a member at the same time as he became an investor?

A. He could do either.

Q. He was not required to be a member until he made the investment?

A. Yes. Not necessarily, but they were members before they invested.

Q. Yes. But you did appeal to the general public who were not members, did you not?

A. Yes, to be members.

Q. You asked them, you urged them to come in and make their savings account with your association?

A. That's correct.



Q. And when they made their deposits, they simultaneously became members, didn't they?

A. I said that didn't necessarily follow. Under the original Savings & Loan, they could become members and subscribe without having entered into the shares as members and pay the (747) installments in monthly to become members, which many of them did.

Q. Yes. But in 1952, you were trying to reach the general public, get as many people in as you could to put money in your association?

A. That's right.

Q. And no investor had to be a borrower, did he?

A. He didn't have to be a borrower, no.

Q. And no borrower had to be an investor in shares?

A. No. He had to be a member.

Q. And you took mortgages from people who were not members when they first applied, didn't you?

A. They might not have been members when they applied.

Q. That was not a requirement unless you loaned the money to them?

A. Not in 1952.

Q. In 1952 they did not have to be members until you actually loaned the money to them?

A. That's correct. Of course, they actually applied for membership with the application.

Q. But they didn't become members—

A. (Interposing): Qualify, that is correct.

Q. Now, what was your principal business in '52?

A. Well, that hadn't changed from the beginning. It was the encouragement of thrift—

(748) Q. (Interposing): No, I didn't ask that. What was your business transaction? What did you do with the capital when you got it from the investors? Did

you engage in the mortgage business, make mortgage loans?

A. Well, we encouraged home ownership any way we could.

Q. Well, you encouraged home ownership by loaning money to people?

A. Well, we did more than that.

Q. Well, did you loan money to people?

A. Yes, but we did more than that.

Q. I didn't ask you that. I asked you whether you loaned money to people secured by mortgages on their homes?

A. Well, that is only a part of it.

Q. And did you loan money to people on mortgages on their homes for other reasons than building or owning homes?

A. Yes.

Q. For what purposes, sir?

A. Anything to promote the home.

Q. I asked whether you loaned any money at any time to people for other than home ownership or promoting the home, such as to buy an automobile, to pay a doctor's bill?

A. Well, the answer is just the same. If we thought that promoted that home, we would make that loan.

Q. Well, did you make a loan secured by a mortgage on the home where a person was going to buy an automobile with the money he borrowed?

(749) A. If —

Q. (Interposing): Yes or no.

A. Well, I might not know, you know. There are a lot of times we consider it our borrower's business when he borrowed money what he was going to do with it. Our prime concern was that if we thought it might

be disastrous to his home or the operation of his home, we would refuse it.

Q. Well, now, Mr. Gates, this isn't a complicated question. In 1952 did you have any borrowers who came in to you, borrowed money from your association, placed a mortgage on their homes, where you knew that the money they borrowed was to buy an automobile?

A. The answer, I think, is yes.

Q. All right. And did you make similar types of loans for other personal uses?

A. We might have.

Q. Buying appliances?

A. Not very much of that.

Q. Medical bills?

A. Yes, I think so.

Q. Other personal purposes—

A. (Interposing): To promote a home, yes.

Q. I didn't ask that, sir.

A. Well, but that is the way they were really definitely decided on by the Board—whether we were doing that home, doing them—

. . . . .

(750) Q. (By Mr. Klein): Did you make loans where the funds were to be used by the borrowers for other purposes than building a home, constructing a home, or maintaining the home itself?

A. I think so.

Q. You did. And what rate of interest did you charge borrowers in 1952?

A. Oh, I don't know. We had a variable interest rate.

Q. What was that, sir?

A. Which was applied on the basis of the way to try to measure the risk. In other words, the higher the

percentage went—my recollection then was that is was around  $5\frac{1}{2}$  per cent, the bulk of them.

Q. The bulk?

A. Possibly to six, maybe some a little less.

The bulk of them were about  $5\frac{1}{2}$ , and some were six?

A. That is my current recollection.

Q. And in 1952, I suppose you were following a pretty conservative (751) policy to safeguard the interests of your investors, were you not?

A. Well, we try to do that right along.

Q. And in loaning money on mortgages in 1952, what ratio of loan would you make on the appraised value of the home?

A. Two-thirds— $66\frac{2}{3}$  maximum.

Q. What was the policy that you followed?

A. That.

Q. You said maximum, but if it is maximum, you may have had a minimum and an in between place. What was the average?

A. We don't have a minimum. The better the security, the better we like it; but the maximum was two-thirds. The statute, I think, was 75 per cent, and our own Board had set a maximum of  $66\frac{2}{3}$ .

Q. But did you, in fact, always loan up to  $66\frac{2}{3}$ ?

A. No, of course not.

Q. And in many instances you loaned less than  $66\frac{2}{3}$  of the appraised value?

A. They applied for less. They wanted less.

Q. And what was your average loan in respect to your appraisal in '52, if you know, and if you don't know, just say you don't know, sir. That is very simple.

A. I don't know, sir.

Q. All right. That's fine. We will get along splendidly that way.

Now, what type of mortgages did you make in 1952, (752) Mr. Gates?

A. All mortgages.

Q. All mortgages?

A. There were very few combinations and a very few commercial, of course. We stayed 2 to 3 per cent at the most, other than four-family homes.

Q. And you said you made some commercial loans?

A. And combinations. I'm not sure we made any commercial loan in 1952, but we have done it.

Q. And what size commercial loans did you make?

A. By and large, small. I mean by that, limited to ten, fifteen thousand dollars.

Q. And what was the maximum loan on homes made in 1952, sir?

A. Well, that would be kind of hard to show now. I wish I would have known you wanted it. I could have had it for you. My guess is that in '52 we didn't exceed \$20,000 in any case.

Q. If I suggested \$22,500, would that refresh your memory?

A. Well, we might have, but it would be in that range—I mean that type of loan.

Q. And your average mortgage loan in 1952, would you know what it was?

A. I really don't.

Q. If I were to suggest around \$5,600, would you say that is approximately correct?

A. I think it could be, because we made a lot of VA mortgages, (753) which were high percentage mortgages.

Q. Mr. Gates, I am going to ask you now what type of mortgages you made? Like conventional mortgages. Did you make conventional mortgages in '52?

A. Oh, yes. That is our main—

Q. (Interposing): And did you make FHA mortgages in '52?

A. I don't think we did in '52. We have made some since.

Q. Did you make VA mortgages in '52?

A. Yes.

Q. And VA mortgages are for 20 or 25 years, are they not?

A. Yes.

Q. And what was the duration, the average duration, of your conventional mortgage?

A. Well, our conventional mortgages were approximately 12-year mortgages—12 years and 7 months.

Q. And they were amortized on a monthly basis?

A. Correct.

Q. We are talking about '52, now.

A. One per cent of the amount.

Q. And did you look into FHA mortgaging in 1952?

A. I think so.

Q. And did you know that the rate of interest on an FHA mortgage was around  $4\frac{1}{4}$  per cent in 1952?

A. Yes.

Q. And did you know that the general term of the FHA mortgage (754) in 1952 was from between 20 and 25 years?

A. Yes.

Q. But your association took mostly conventional mortgages?

A. Correct.

Q. And charged an average rate of interest of around  $5\frac{1}{2}$  to 6 per cent?

A. I think so.